

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.14866 OF 2021

SUNIL RAMESH BERAD
VERSUS
HARIBHAU SHANKAR BERAD AND OTHERS

Mr.M.B.Ubale, Advocate for the petitioner.

(CORAM : BHARATI H. DANGRE, J.)

DATE : JANUARY 24, 2022

PER COURT :

1. Heard the learned counsel for the petitioner and perused the 2 orders which are impugned in the petition.

2. The petitioner is the original plaintiff who instituted RCS No.366/2018 for mandatory and perpetual injunction for restraining the defendants from raising permanent structure on land Survey No.214/1.

In the said suit, an application is moved vide Exh.5 against defendant Nos. 1 to 3 from restraining them from raising any construction on the suit land till final disposal of the suit. The suit property was described in the plaint with reference to it's boundaries

being Survey No. 213/1 admeasuring 2 Hectre 56R situated at village Barababhali, Bhingar, Tal.Ahmednagar and 214/1 admeasuring 3 Hectre 08 R. The case of the plaintiff is that the suit land is gifted by Anusayabai to the father of the petitioner Ramesh and his uncle namely Subhash. It was pleaded that after death of Ramesh, the name of his legal heirs including the petitioner are recorded in the revenue record. The claim raised in the plaint is to the effect that respondent Nos. 1 to 3 are not at all concerned with the suit land and their possession is only permissive in nature and since they were in the process of raising construction on the suit property, an injunction was sought for.

3. Upon hearing the application, the First Court recorded that the nature of the house standing on Survey No.214/1 revealed that defendant No.1 is in settled possession of some portion of the said land. Though the defendants did not file any document on record to show that in oral partition, 1.05 R land was allotted to him. However, on the basis of the documents, photographs and Gram Panchayat Tax bills placed on record, the Gram Panchayat House No.96 was recorded to be in possession of defendant No.1 Haribhau. It was also recorded that he was paying municipal taxes from 1990 and neither the plaintiff's father

Ramesh or the plaintiff or any other person on their behalf challenged their possession. Construing the silence on the part of the plaintiff and his father, where the defendant No.1 has constructed a permanent structure on the suit land, his longstanding possession was held to be prima facie proved and the contention that it was merely permissive, was not accepted by the Trial Court. Recording balance of convenience and irreparable loss in favour of the defendant, the application vide Exh.5 was rejected.

The First Appellate Court i.e. the District Judge-6, Ahmednagar in Misc.Civil Appeal No.24/2019, upheld the said finding and recorded that defendant Nos. 1 to 3 has not created any obstruction in the way of the plaintiff for accessing their property and as such the order impugned is upheld.

4. The two concurrent findings rendered against the present petitioner/plaintiff are based on the reasonings stated therein which in my considered opinion do not suffer from any perversity. The findings therefore are upheld, however since the suit filed by the plaintiff is of the year 2018, and the injunction is operating against him, since the Exh.5 was rejected in the year 2015, I deem it expedient to direct the

Civil Judge, S.D. Ahmednagar to dispose of the proceeding in RCS No.366/2018 within a period of 6 (six) months from today. Writ petition is dismissed with the aforesaid direction being issued.

(BHARATI H. DANGRE, J.)