

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1885 OF 2017

Shri. Ilahi Nijam Mulani

..Petitioner

Versus

Sou. Bebijan Ismail Sayyad and Anr.

..Respondents

Mr. Shriniwas S. Patwardhan, for the Petitioner.

Mr. Anand Patil i/by Anand Patil & Associates, for Respondent Nos.1
& 2.

CORAM : NITIN W. SAMBRE, J.

DATE : 17th JANUARY, 2022

PC.

1. This petition is by the defendant No.1 in Regular Civil Suit No.15 of 2013. The aforesaid suit was initiated by the respondents for declaration and injunction in relation to immovable property.

2. By way of impugned order, both the Courts below have concurrently held that respondents/plaintiffs are entitled for injunction. Such part of prayer of temporary injunction which was not granted by Trial Court vide order dated 22nd August, 2016, was allowed by the Appellate Court

3. Mr. Anand Patil, learned counsel appearing for the respondents/plaintiffs informs that the suit is at present fixed for recording of cross-examination of the plaintiffs whereas the

contentions of Mr. Shriniwas Patwardhan, learned counsel appearing for the petitioner are that hearing in the suit is delayed because of non-cooperation of the respondents/plaintiffs as the injunction is operating in their favour.

4. I have considered the nature of injunction ordered.

5. The petitioner is enjoined from interfering with the possession of the plaintiffs over the suit property. In addition to above, the learned Trial Court after appreciating *prima-facie* case in favour of respondents/plaintiffs has proceeded to grant temporary injunction vide order dated 2nd July, 2014, restraining petitioner from interfering in land Gat No.37, Gram Panchayat Milkat No.1483.

6. Mr. Shriniwas Patwardhan, learned counsel submits that factual matrix and the evidence on record rather depicts that the order of injunction is not sustainable whereas Mr. Anand Patil would urge that the concurrent findings recorded by both the Courts below disentitles the petitioner to the grant of relief.

7. With the assistance of both the learned counsels, I have perused the orders impugned.

8. The Trial Court while granting part prayer of temporary injunction has considered the rival claims and noted that the

respondents/plaintiffs have made out *prima-facie* case for grant of injunction to the extent of the land Gram Panchayat Milkat No.1483 and rest of the part of the prayer was rejected. However, the appellate court vide impugned order allowed the appeal of respondents/plaintiffs vide order dated 22nd August, 2016 and as such there operates blanket injunction against the petitioner.

9. It is worth to observe that the present petitioner/defendant has not questioned the order of the Trial Court granting temporary injunction dated 2nd July, 2014. For the first time order of the appellate Court which is questioned in the present petition along with the order of the Trial Court only after the adverse order of injunction passed by the Appellate Court, petitioner/defendant has chosen to question the order of Trial Court directly before this Court.

10. The fact remains that the petitioner has accepted the order dated 2nd July, 2014 passed by the Trial Court as no appeal against such order was preferred before the appellate court rather the petitioner has challenged both the orders for the first time before this Court. The order of injunction passed by the Trial Court is in operation for a period of eight years whereas that of appellate court for last about more than five years.

11. In the aforesaid background, in my opinion, having regard to the concurrent findings recorded against the petitioner, no

case for interference in the extraordinary jurisdiction of this Court is made out particularly when the injunction orders are in operation for a quite long period without there being any interim relief in favour of the petitioner.

12. The petition as such stands dismissed.

13. However, considering the joint request made by the parties, hearing of the suit is expedited as the suit is more than five years old.

[NITIN W. SAMBRE, J.]