

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

**APPEAL FROM ORDER NO.489 OF 2021
WITH
INTERIM APPLICATION NO.3689 OF 2021
IN
APPEAL FROM ORDER NO.489 OF 2021**

Balu Ramchandra Rasal and Ors. ...Appellant (s)

Versus

Gajanan Shivram Barge ...Respondent(s)

**WITH
APPEAL FROM ORDER (STAMP) NO.99484 OF 2020**

Gajanan Shivram Barge ...Appellant (s)

Versus

Balu Ramchandra Rasal and Ors. ...Respondent(s)

...

Mr. Vaibhav Gaikwad for the Appellant in AO/489/2021 and for the Respondent in AOST/99484/2020.

Mr. Rushikesh Barge for the Respondent in AO/489/2021 and for the Appellant in AOST/99484/2020.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 5th DECEMBER, 2022.

P. C. :-

1. With consent, heard finally at the stage of admission.
2. These appeals are directed against order dated 28/09/2020 passed in Regular Civil Appeal No.148 of 2018. By the impugned order, the first Appellate Court dismissed the application at Exhibit-42

seeking demolition of the tin shed by way of interim mandatory injunction and further allowed the application at Exhibit-29 and thereby restrained the Plaintiffs from obstructing and interfering with possession of Defendant No.2 in respect of the suit property and from carrying out further construction in the suit property pending hearing of the appeal.

3. Heard Mr. Vaibhav Gaikwad, learned counsel for the Appellants-Plaintiffs and Mr. Rushikesh Barge, learned counsel for Respondent-Defendant No.2. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

4. The Appellants in Appeal from Order No.489 of 2021 are the Plaintiffs whereas the Appellant in Appeal from Order (stamp) No.99484 of 2020 is the Defendant No.2 in R.C.S. No.154 of 2005 and they shall be hereinafter referred to as 'the Plaintiffs' and 'the Defendant No.2' respectively.

5. The Plaintiffs claimed that the properties under Gat Nos.291 and 292/1 of Village-Koregaon, Taluka-Koregaon, District-Satara, hereinafter referred to as 'the suit property', were owned by

Ramu @ Ramchandra Rasal. The Plaintiffs claimed that upon the death of Ramu, the said properties are inherited by them and Defendant No.1-Bhiku and that the suit property is in their joint possession. The Plaintiffs claimed that the Defendant No.2 has purchased the western portion of the suit property from Sonu Koli, who according to the Plaintiffs had no right, title or interest in the suit property. The Plaintiffs filed a suit for partition with an assertion that the Defendant No.2 in collusion with Defendant No.1 is trying to deprive them of their proprietary rights.

6. It is not in dispute that the eastern portion of the suit property has been purchased by Defendant No.2 vide deed of sale dated 02/06/1998. There is no challenge to the said sale deed. Learned counsel for the Plaintiffs states that the dispute is restricted to the western portion of the property under Survey Nos.291 and 292/1.

7. It may be noted that Defendant No.2 claims right to the western part of the property under Survey No.291 and 292/1 by virtue of an unregistered agreement for sale, executed in the year 1998. Such an unregistered agreement would not confer any right except to seek specific performance. It is not in dispute that Defendant No.2 has not

filed a suit for specific performance. Hence, prima facie Defendant No.2 cannot claim right in respect of the western portion of the suit property by virtue of an unregistered agreement for sale.

8. It is pertinent to note that the Trial Court has decreed the suit with a specific finding that the Plaintiffs are in possession of the said western portion of the suit property under Survey Nos.291 and 292/1. Though the Defendant No.2 claims to be in possession of the entire suit property, the survey entries in his name are only in respect of the eastern portion. The Appellate Court has also observed that *“admittedly there are long standing entries in the ownership column of the predecessor of the Plaintiffs”*. Defendant No.2 had neither filed counter claim nor adduced any evidence before the Trial Court to prove his possession in respect of western portion of the property. Furthermore, Defendant No.2 had failed to demonstrate that the property is in danger of being wasted, damaged or alienated or wrongfully sold in execution of a decree. In such circumstances and particularly in view of the findings recorded by the trial court, the Appellate Court could not have restrained the Plaintiffs from enjoying or possessing the western part of the suit property. The impugned order to that extent is perverse and reflects total non-application of

mind and hence the same cannot be sustained. As regards dismissal of interim mandatory injunction, the same does not suffer from illegality or infirmity.

9. In view of the reasons supra, the Appeal from Order No.489 of 2021 is allowed. The impugned order to the extent of allowing application at Exhibit 29 is quashed and set aside. The Appeal from Order (stamp) No.99484 of 2020 filed by Defendant No.2 is dismissed.

10. Pending application (s), if any, stand (s) disposed of.

11. At this stage learned counsel for Defendant No.2 seeks stay of the order. Same is rejected.

(SMT. ANUJA PRABHUDESSAI, J.)