

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.902 OF 2018

Vithu Ishwara Bhike ..Petitioner
Versus
Saubai Pandurang Bhike and Ors. ..Respondents

Mr. Sandeep S. Koregave, for the Petitioner.
Mr. S. H. Kankal, AGP, for the Respondent Nos.1 & 4.

CORAM : NITIN W. SAMBRE, J.

DATE : 8th MARCH, 2022

PC.

1. Heard.
2. Petitioner/plaintiff initiated suit based on cause of action dated 31st July, 2016 for permanent injunction based on settled possession. Trial Court granted temporary injunction in favour of the petitioner, however, the said order is reversed by the Appellate Court vide impugned order dated 22nd August, 2017. As such, this petition.
3. I have heard learned counsel for the petitioner Mr. Sandeep Koregave at length.
4. Drawing support from the documents i.e. partition-deed which is claimed to have been executed *inter se* between predecessor of the petitioner and defendants on 22nd July, 1943, revenue entries i.e. 7/12 extract and finding recorded in an earlier

suit preferred by the defendants for injunction being RCS No.153 of 2002. According to him, since the suit preferred by the respondents being RCS No.153 of 2002 came to be dismissed vide judgment of Appellate Court on 5th January, 2016, Second Appeal at the behest of the respondents is pending. He would as such claim that the Court below committed an error in refusing prayer for grant of temporary injunction.

5. I have appreciated the said submissions in the light of finding recorded by the Lower Appellate Court in the impugned order whereby the prayer for temporary injunction is rejected.

6. It is required to be noted that pursuant to position of law that there is presumption of existence of joint family, the Court below proceeded to analyze the claim of the petitioner/plaintiff so as to find out whether the petitioner can be said to be in settled possession of the suit property.

7. The petitioner has relied on certain documents i.e. partition-deed as referred above, so also revenue entry of the entire 7/12 extract. It appears that all these documents are considered in the impugned order rightly so by the Appellate Court to record finding that the petitioner's settled possession over the suit property cannot be inferred.

8. Rather the Trial Court was justified to have been ordering by recording finding that the respondents/defendants have failed to demonstrate their settled possession over the suit property.

That being so, inference drawn in favour of the petitioner/plaintiff that he is in settled possession over the suit property while ordering temporary injunction in favour of the petitioner.

9. The fact remains that the Lower Appellate Court while reversing the finding in an appeal of the respondents has not recorded a positive finding that the petitioner is in settled possession of the suit property.

10. Since the petitioner has failed to demonstrate that he is in settled possession of the suit property, the Court below was justified in refusing/reversing order of grant of temporary injunction. That being so, no case for interference in the extraordinary jurisdiction of this Court is made out.

12. As such petition fails, dismissed.

13. The fact remains that the impugned order thereby refusing temporary injunction is holding field for last more than four years which fact also prevail before this Court for grant of rejection of temporary injunction.

14. Since the suit is more than five years old, it shall be open for the petitioner to move before the Trial Court for expediting the same.

[NITIN W. SAMBRE, J.]