

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9146 OF 2022

Rajendra Dagadu Gurubhaye

Petitioner

Versus

1. Vimalbai wd/o Prakash Gurubhaye
2. Santosh s/o Prakash Gurubhaye
3. Anil s/o Prakash Gurubhaye
4. Jamana D/o Prakash Gurubhaye
5. Ashok S/o Dagadu Gurubhaye
6. Bhagwan Dagadu Gurubhaye

Respondents

Mr. B.S. Doifode, Advocate for the petitioner.

Miss. Medha Pramod Patel h/f. Mr. A.P. Avhad, Advocate for respondent Nos. 1 to 4.

Mr. Y.L. Bidve, Advocate for respondent Nos. 5 and 6.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 12th JULY, 2023

ORDER :

1. Petitioner is aggrieved by the order passed by learned Civil Judge, Junior Division, Soygaon, below Exhibit-5, thereby rejecting the temporary injunction application filed by the petitioner. Said order is confirmed by the learned District Judge, Aurangabad in Miscellaneous Civil Appeal No. 1/2022.

2. Petitioner/plaintiff filed suit for declaration that he is absolute owner and possessor of land Gat No. 1/1, admeasuring 1 Hectare 20 Are to the extent of 30 Are, situated at village

Varkhedi (Kh.) Taluka- Soygaon, District- Aurangabad and for perpetual injunction against defendant Nos. 1 to 4 from obstructing and interfering in lawful use and possession of plaintiff over land Gat No. 1/1. Along with the suit, petitioner filed temporary injunction application. Out of six defendants, defendant Nos. 5 and 6 who are real brothers of the petitioners have filed a purshis, accepting the claim of the petitioner. Respondent Nos. 1 to 4 opposed the suit by filing written statement and say. Trial Court after hearing the parties rejected the temporary injunction application holding that the petitioner/plaintiff has not filed on record any document to show that on what basis he has written four boundaries in the plaint. Trial Court therefore was of the view that the plaintiff has failed to prove four boundaries of the suit property by filing cogent and reliable evidence. Said finding of fact and order of rejection of temporary injunction application passed by the Trial Court is confirmed by the Appellate Court in Miscellaneous Civil Appeal No. 1/2022. Hence, the present petition.

3. Heard the learned advocate for the petitioner and learned advocates for the respondents. Perused the memo of petition, annexures thereto and the impugned orders.

4. It is a matter of record that the petitioner has clearly described four boundaries of the suit property in the plaint as well as in the temporary injunction application. It is not in dispute that the petitioner has also filed self attested certificate showing boundaries of land, obtained from Maha E-Seva Kendra, Fardapur. This evidence is erroneously ignored by the Trial Court as well as by the Appellate Court, while rejecting the temporary injunction application.

5. The Appellate Court has placed reliance on the alleged partition deed. It also appears from the record that the petitioner filed panchnama dated 22.10.2020 conducted by Circle Officer. As per the said panchnama, RCC construction of the petitioner is going on in Gat No. 1/1 and not in Gat No. 101. It also appears from the 7/12 extract that with the petitioner, other defendants i.e. Bhagwan, Vimalbai, Ashok have also equal share i.e. 30 Are in land Gat No. 1/1. However, it is mentioned in the panchnama that who is in possession of which portion is not clear. The Appellate Court has not considered said panchnama on the ground that other defendants were not present at the time of

conducting the panchnama. In that view of the matter, the Appellate Court has rejected the appeal preferred by the petitioner.

6. Considering the aforesaid circumstances, this Court is of the view that the petitioner has proved prima facie case and balance of convenience is in favour of the petitioner and if temporary injunction is not granted, petitioner will suffer irreparable loss and hardship. In that view of the matter, writ petition deserves to be allowed. In the result, following order.

ORDER

- i] Writ petition is allowed.
- ii] Impugned order dated 25.11.2021, passed by learned Civil Judge, Junior Division, Soygaon, below Exhibit-5 in Regular Civil Suit No. 49/2020 and order dated 20.03.2022, passed by learned District Judge-12, Aurangabad in Miscellaneous Civil Appeal No. 1/2022 are hereby quashed and set aside.
- iii] Application Exhibit-5 is allowed.
- iv] It is made clear that the construction made by the petitioner on the suit property shall be subject to the final decision of the suit.

[NITIN B. SURYAWANSHI, J.]