

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13443 OF 2021

Gundappa Virbhadrappa Kalyani

Petitioner

Versus

Meenakshi Prasad Jayshette And Another

Respondents

Mr. V.R. Dhorde, Advocate for the petitioner.

Mr. V.Y. Bhide, Advocate for respondents.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 30th JUNE, 2023

ORDER :

1. Petitioner is aggrieved by the order passed by learned District Judge-2, Latur, in Miscellaneous Civil Appeal No. 24/2021, thereby allowing the appeal and set aside the order passed by the Trial Court, below Exhibit-5.

2. Petitioner/plaintiff filed suit for permanent injunction against the respondents/defendants. In the suit, application Exhibit-5 is filed seeking temporary injunction. Defendants appeared and opposed the suit by filing written statement and say. Trial Court granted injunction in favour of the petitioner to the following effect:-

'The defendants or any other persons on behalf of defendants is temporarily restrained by issuing temporary injunction from obstructing, causing any

kind of interference in the possession of the plaintiff on the suit property most specifically described in paragraph No. 3 of the application, i.e. 02H 48R land in Gat no. 340, till the final disposal of the suit.'

3. Being aggrieved by the temporary injunction granted in favour of the petitioner, respondents/defendants filed Miscellaneous Civil Appeal No. 24/2021, in the District Court, which is allowed. Hence, the present petition.

4. Heard the learned advocate for the petitioner and learned advocate for the respondents. Perused the memo of writ petition, annexures thereto and the impugned order.

5. It appears from the record that in Regular Civil Suit No. 540/1985, there was compromise between the parties. Predecessor in title of the petitioner was party to the said compromise. In clause 3 of the compromise terms it is stated that there is land of defendants towards northern side in Survey No. 340, Mauje- Ausa and for approach road a cart way is left towards western side boundary of Survey No. 340. Parties to said suit agreed to the said compromise terms. Thus, same is also admitted by the predecessor in title of the petitioner.

6. On 23.05.2008, Mamlatdar in Revenue proceeding No. 2006/MAG/Kavi/490, directed husband of defendant No. 1

and father of defendant No. 2, to approach his land as per approach way mentioned in the compromise decree of Regular Civil Suit No. 540/1985. In the panchnama dated 27.03.2006, prepared in the said proceeding, it is mentioned that land Survey No. 340 of Suryakant Jayshette is situated adjoining to the western side village boundary Ausa-Khanapur and 20 trees are standing on village boundary, so the approach way will not be available from the village boundary to go the land of applicant (Prasad Jayshette), unless the trees on it are cut, and said village boundary way is not in use. It is also mentioned that land of applicant (Prasad Jayshette) is situated at Survey No. 340, so the Suryakant Jayshette has to give the way to the applicant-Prasad from his land of Survey No. 340 adjoining to the village boundary, and applicant has no other alternative way. It is also clear from the sale deed executed in favour of the petitioner that a village boundary is shown and not the village boundary way, towards western side of the suit property.

7. Therefore, prima facie, it appears that predecessor in title of the petitioner namely Suryakant Jayshette has left approach way i.e. cart way for carrying bullock cart, agricultural equipment to the northern side land of respondents/defendants

from the western side of suit property, adjoining to the AUSA-Khanapur village boundary as per the compromise decree dated 10.12.1990 passed in Regular Civil Suit No. 540/1985. Said compromise is also acted upon by the revenue authorities.

8. In view of aforesaid facts, learned District Judge appears to be right in allowing the appeal filed by the defendants and setting aside the order of Trial Court, granting temporary injunction in favour of the petitioner.

9. The District Court has rightly recorded finding of fact on the basis of record. The Trial Court has failed to appreciate the facts and the earlier orders in the proper perspective. In the facts of the present case, the District Court has rightly exercised discretion in favour of respondents. The defendants have made out a prima facie case and balance of convenience is in their favour. Irreparable loss would be caused, if interim injunction is not granted in their favour. In this view of the matter, there appears no illegality or perversity in the order impugned in the present petition. Writ petition being devoid of merit is dismissed.

10. Needless to state that the observations in this order are prima facie and Trial Court shall not be influenced by them while deciding the suit on merits.

[NITIN B. SURYAWANSHI, J.]