

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13964 OF 2021

Vikram S/o. Ganpatrao Gojamgunde
and others

.... Petitioners

Versus

Smt. Heerabai W/o Baburao Pardeshi (Teli)
and others

.... Respondents

.....

Mr. Hanmant V. Patil, Advocate for the Petitioners
Ms. Anjali Dube (Bajpai), Advocate for Respondent No.1

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 29th AUGUST, 2023

ORDER :

1. The petitioners/defendants are aggrieved by the order passed by learned Extra Joint Civil Judge, Senior Division, Latur, below Exhibit-138 in Regular Civil Suit No.827 of 2012, thereby allowing the application filed by respondents No.1/plaintiff for police aid.

2. Regular Civil Suit No.827 of 2012 is filed by respondent No.1/plaintiff for following prayers;

"1] That, by passing the decree of perpetual injunction the defendant Nos.1 to 5, their relatives, their servants, agents or anybody claiming through them may kindly be restrained permanently from causing any kind of

interference and obstructions in the suit property.

2] The defendants number 6 & 7 may kindly be directed to pay damages and compensation of Rs.25,000/- to the plaintiff for the false and wrong measurement report dated 30-5-2011 bearing no.21/2011."

3. Suit property City Survey No.9405, wherein old Godown having four walls and tin roof is situated. It was purchased by the husband of plaintiff by way of registered sale deed bearing Day Book No.629/1958 dated 22/09/1958. Defendant Nos.1 to 5 appeared and by filing written statement, opposed the suit. They claimed that sale deed of the suit property executed in favour of the husband of the plaintiff is illegal and void. The defendants claimed ownership and possession over the western side wall of the godown. They denied the claim of the plaintiff and prayed for dismissal of the suit.

4. Petitioner Nos.4 and 5/defendant Nos.4 and 5 in Regular Civil Suit No.827 of 2012, have filed Regular Civil Suit No.824 of 2012 for perpetual injunction against respondent No.1/plaintiff in Regular Civil Suit No.827 of 2012, and her sons, for retraining them from causing any interference in

plaintiff's possession over Municipal Corporation House No.26/6/1 i.e. City Survey No.9782 admeasuring 136.34 Sq. Mtrs. situated at Subhash Chowk, Latur, claiming that they have purchased the said City Survey No.9782 to the extent of 136.34 Sq. Mtrs. by registered sale deed dated 19/05/2008 from Sham Akangire. They measured the said property through Taluka Inspector of Land Records. The defendants in the suit illegally entered the premises at the instigation of respondent No.1/defendant No.1. Hence, they prayed for perpetual injunction against the defendants. Along with the suit they filed application Exhibit-5 in Regular Civil Suit No.824 of 2012.

5. The plaintiff in Regular Civil Suit No.827 of 2012 filed application Exhibit-5 for temporary injunction, claiming that defendants are causing interference in the possession of the suit property, and they are trying to demolish the western wall. They are having political power and muscle and money power. They tried to demolish the wall. The said application was resisted by the defendants by filing say. The Trial Court heard both the applications Exhibit-5 filed in Regular Civil Suit No.827 of 2012 as well as Regular Civil Suit No.824 of 2012 and by common order passed on 16/08/2013, allowed the

application filed by respondent No.1/plaintiff in Regular Civil Suit No.827 of 2012 and restrained the defendants from causing interference in possession of the plaintiff over the suit property. The application Exhibit-5 filed by the defendants in Regular Civil Suit No.824 of 2012 is rejected.

6. Thereafter, application Exhibit-138 under Section 151 of the Code of Civil Procedure is filed by the plaintiff for police aid, contending that during the pendency of the suit, defendants with *malafide* intention to destroy the evidence have damaged western side wall of the property owned and possessed by the plaintiff. Plaintiff lodged information in that behalf, which is registered at Crime No.189 of 2012 at Gandhi Chowk Police Station, Latur against the defendants. The plaintiff has covered the demolished wall by tins. The tins were also damaged by defendant Nos.1 to 5 with the help of gas cutter. Therefore, again information was lodged on 04/11/2022, and Crime No.196 OF 2012 was registered against the defendants. Thereafter, the plaintiff repaired the tin wall with the permission of the Court. The plaintiff is doing business of selling edible oil in the suit property, but the damaged wall is causing threat to his business. Recently,

thieves had entered in plaintiff's premises by removing the stones at western side.

The plaintiff had received notice of Municipal Corporation dated 08/07/2017 to carry out repairs of damaged western wall of the suit property. Accordingly, he started repair work, but the defendants have stopped the work forcibly, with the help of gundas, and though the plaintiff applied for providing police aid, his application was not favorably considered by the Superintendent of Police, Latur. He, therefore, prayed for grant of police aid, while conducting repairs of the suit damaged wall.

7. The defendants opposed the application by filing a detail say at Exhibit-145, claiming that question of title and possession of disputed wall and the area under it, is *sub judice* before the Trial Court, and the application is filed with *malafide* intention to change the nature of disputed wall to create evidence. The Trial Court, after hearing the parties has allowed the application. Hence, the present petition.

8. Heard the learned advocate for the petitioners and learned advocate for respondent No.1. Perused the writ petition memo, annexures thereto, impugned order.

9. Learned advocate for the petitioners assailed the impugned order contending that the application filed by the plaintiff under Section 151 of the Code of Civil Procedure was not maintainable as by way of the said application, the plaintiff is trying to show her possession over the wall and trying to collect the evidence, which is not permissible in law. He further submits that claim of the plaintiff over 2650 Sq. Mtrs. area of City Survey No.9405 is incorrect as in the record of City Survey, area of City Survey No.9405 is shown as 220.5 Sq. Mtrs. Even in the mortgaged deed executed by the plaintiff, she has admitted that she is owner of 220.5 Se. Mtrs area of City Survey No.9405. It is submitted that in application Exhibit138, the plaintiff has admitted that the disputed wall is damaged by the defendants on 28/10/2012. The said application for permission of police protection is filed on 18/07/2018, i.e. after six years, which is allowed by the Trial Court after nine years from the date of alleged demolition. In lieu of permission granted to the plaintiff for erection of tin shed wall with the consent of the defendants by order passed below Exhibit-29 and as the said tin shed wall erected and the property is already protected, and there is no such alarming necessity to allow the application Exhibit-138. It is also submitted that the sale deed dated 22/09/1958 by which the

suit property is purchased by the husband of the plaintiff, it is no where stated that, four walls are part and parcel of the purchased property i.e. City Survey No.9405. Therefore, the plaintiff can not claim her exclusive ownership and possessions of the disputed wall.

10. Per contra, learned advocate for the respondent No.1/plaintiff supported the impugned order by relying upon the photographs of the damaged wall placed on record, and the Commissioner's report. She submitted that in spite of order passed by the Trial Court, to maintain the *status quo*, the defendant Nos. 1 to 5 demolished the wall between the night of 28-29 October, 2012 for which criminal case is lodged with the police. Due to demolition of 15 feet wall in length, the plaintiff, with the permission of the Court covered it by tin sheets from inside of the wall, but again the same was damaged by defendant Nos.1 to 5. The said incident is also reported to the police. From the averments made in the application Exhibit-29, she further pointed out that defendant No.5 is a Municipal Corporator and defendant Nos.1 to 5 are having support of political party. She submitted that due to the demolition of wall the plaintiff is suffering serious hardships. The Municipal Corporation has issued notice dated 08/07/2017

to carry out repairs of the damaged wall of the suit property. Accordingly, the plaintiff started repairing work. The defendants have forcibly stopped the work. In these peculiar facts of the case, the Trial Court is justified in allowing the application Exhibit-138. She, therefore, submitted that there is no merit in the writ petition, and the same may be dismissed.

11. Admittedly, *interim* injunction is operating against the defendants. The photographs of the damaged western wall placed on record clearly show that the wall was damaged and the plaintiff has tried to cover it up with the help of tins, however, there are huge gaps appearing in the wall erected with the help of tins and damaged wall.

12. From the sale deed dated 29/05/2008 executed in favour of the defendants, it is clear that the petitioner Nos. 4 and 5 have purchased open plot admeasuring 136.34 Se. Mtrs. On the western side of the said property, suit property is situated. The sale deed executed in favour of plaintiff's husband dated 22/09/1958, is titled as "खरेदीखत चौदिवारी वखारचे". Recitals in the sale deed makes it clear that 'वखार' i.e. Godown has four walls having door on the southern side, one toilet, and it has 14 beams and has roof of 133 tins.

13. It is not disputed that the plaintiff is conducting business in the suit property and due to damaged wall, he is suffering serious hardships. It is also clear from the notice received by the plaintiff from the Municipal Corporation that the plaintiff is required to carry out repairs of the damaged wall. In these peculiar facts, the trial Court is justified in granting application Exhibit-138 by relying on the decision of this Court in ***Smt. Nirabai Patil Vs. Narayan D. Patil, AIR 2004 Bombay 225.***

14. There is no merit in the submission of the petitioners/defendants that respondent No.1/plaintiff is trying to collect the evidence by seeking the police aid. It appears from the contentions of the plaintiff that when he tried to repair the damaged wall pursuant to the notice of the Corporation, the defendants obstructed the same. In these peculiar facts of the case, the Trial Court has rightly held that police aid is required to be granted.

15. Learned advocate for the petitioner has placed reliance on ***Padam Sen and Anr. Vs. The State of U.P., AIR 1961 SC 218 (Supreme Court)***, wherein the Apex Court held that, powers saved by Section 151 are not powers over

substantive rights which a litigant possesses. Civil Court cannot, under inherent powers, appoint commissioner to seize account books in possession of plaintiff. The said decision is distinguishable on facts, and is of no help to the petitioners.

16. There is no illegality or perversity in the order impugned in the present petition. There is no jurisdictional error or error of law committed by the Trial Court, while allowing the application Exhibit-138. No case is made out by the petitioners to warrant interference in extraordinary writ jurisdiction. The writ petition being devoid of merit is dismissed.

17. At this stage, learned advocate for the petitioner seeks continuation of *interim* relief granted in his favour. For the reasons stated in the order, prayer is rejected.

[NITIN B. SURYAWANSHI]
JUDGE

S.P Rane