

VRJ

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

WRIT PETITION NO.11148 OF 2023

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Durgappa Gundappa Jadhav & Anr. ... Petitioners

V/s.

Pradip Narsih Pimparkar & Anr. ... Respondents

Mr. Prasad P. Kulkarni for the petitioners.

Mr. Shailendra Kanetkar i/by Mr. Sumit Kothari for the respondents.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 7, 2023

P.C.:

1. Challenge in this petition is to the order of granting police aid to the plaintiffs in whose favour Trial Court granted injunction restraining defendants from disturbing possession of the plaintiffs over the suit property. The suit property is Gat No.73 admeasuring area 6 H. 74 R. situated at Soregaon, Taluka North Solapur, District Solapur.

2. The petitioners challenged the order of the Trial Court restraining them from disturbing plaintiffs' possession over the suit property. The plaintiffs filed an application before the Trial Court for police aid. The Trial Court by the impugned order granted police aid to the plaintiffs.

3. The Trial Court refers two judgments of this Court in the case

of **Hemant Vasant Jagtap and Ors. vs. Haji Abdul Malik Haji Yunusisa and Ors.** reported in MANU/MH/0225/2023 and **Nirabai J. Patil vs. Narayan D. Patil** reported in 2004 (1) Mh.L.J. 1058.

4. On perusal of the record, it appears that the Trial Court restrained the petitioners from disturbing the plaintiffs' possession over the suit property. The petitioners have filed an application for temporary injunction against the plaintiffs in the said miscellaneous appeal. The lower Appellate Court had issued notice on an application under Order 39 Rules 1 and 2 of the Civil Procedure Code, 1908.

5. It is, therefore, clear that stay to the order of injunction restraining the petitioners from disturbing the plaintiffs' possession over the suit property is neither prayed nor is granted. With the result, the order of injunction in favour of the plaintiffs is in force.

6. The plaintiffs apprehending obstruction from the petitioners while constructing a wall filed an application for grant of police protection. The Trial Court in exercise of powers under section 151 of the Civil Procedure Code, 1908, allowed the application.

7. The petitioners relying on judgment of this Court in **Hemant Vasant Jagtap and Ors.** (supra) submitted that unless and until the Court is satisfied about existence of grave urgency, relief of police protection under section 151 of the Civil Procedure Code, 1908 cannot be granted.

8. Moreover, power under section 151 of the Civil Procedure Code, 1908, cannot be exercised in such situation. It can be exercised under other provisions of the Civil Procedure Code,

1908. On perusal of paragraph 16 of the **Hemant Vasant Jagtap and Ors.** (supra), the Court while passing of such order of police protection held that if the Court is satisfied about existence of grave emergency, such as apprehension of violence by the persons against whom the order has been passed, police protection can be provided. The nature of such satisfaction needs to be gathered considering overall circumstances of the case.

9. The Trial Court on consideration of merit, material on record and circumstances of the case recorded a finding that there is possibility of obstructions to the plaintiffs' construction, which may lead to complications involving question of public peace and law and order, such finding of fact need not be disturbed under supervisory powers of this Court under Article 227 of the Constitution of India.

10. It is well settled that this Court while exercising supervisory powers needs to consider whether the lower Court has acted within its jurisdiction or the findings recorded are perverse or not. If the exercise of powers by the Trial Court is within its jurisdiction and is not in contravention of any substantive or procedural law, it is not necessary to interfere with exercise of such discretion.

11. In view of the judgment in the case of **Nirabai J. Patil** (supra) followed subsequently in the case of **Hemant Vasant Jagtap and Ors.** (supra). It is consistently held that such order can be passed in exercise of power under section 151 of the Civil Procedure Code, 1908. Therefore, the order cannot be termed as an order without jurisdiction.

12. In so far as second argument of the learned advocate for the petitioners that such power could not have been exercised under section 151 is concerned, the Single Judge of this Court in **Nirabai's** case and, thereafter, in **Hemant Vasant Jagtap's** case has held that the Trial Court has power to pass such order under section 151 of the Civil Procedure Code, 1908. The view adopted by earlier two Single Judges is binding on Co-ordinate Bench of this Court. Therefore, there is no substance in the argument that said power cannot be exercised under section 151 of the Civil Procedure Code, 1908.

13. The reliance placed on judgment in the case of **Nain Singh vs. Koonwarjee And Others** reported in AIR 1970 SC 997, is misplaced as the question involved was whether inherent power under section 151 of the Civil Procedure Code, 1908, can be exercised in the absence of filing of appeal challenging order of remand. In the facts of the said case, the parties had alternative remedy of appeal and, therefore, the Apex Court held that power under section 151 cannot be exercised. In the facts of the case, as is held by Single Judge of this Court, there is no other power under the Civil Procedure Code, 1908, which expressly confers jurisdiction on the Court to pass an order of police aid. Therefore, the judgment in the case of **Nain Singh** (supra) is not applicable. There is no merit in the writ petition.

14. The civil writ petition is dismissed. No costs.

(AMIT BORKAR, J.)