

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

CIVIL WRIT PETITION NO. 12639 OF 2022

Ashok Dnaynu Patil

..Petitioner

Versus

Niwas Banda Shinde & Ors.

..Respondents

Mr. Manoj A. Patil for Petitioner.

Mr. Sandeep S. Koregave for Respondent No.1.

Mr. Rahul P. Kasbekar for Respondent Nos.3 to 6.

CORAM : SARANG V. KOTWAL, J.

DATE : 26 APRIL 2023

PC :

1. The Petitioner has challenged the order dated 27/09/2022 passed by learned District Judge-2, Kolhapur in M.C.A.No.169 of 2022 thereby confirming the order dated 04/07/2022 passed by Civil Judge, S.D., Kagal, below Exhibit-5 in R.C.S.No.84 of 2022.

2. Heard Shri. Manoj Patil, learned counsel for the Petitioner, Shri. Sandeep Koregave, learned counsel for the Respondent No.1 and Shri. Rahul Kasbekar, learned counsel for the Respondent Nos.3 to 6.

3. The Petitioner is the original Plaintiff. He has filed the suit against the Respondent No.1 who is the original Defendant No.1 and five others. The suit is filed for partition of the suit property and for possession. Another prayer is for perpetual injunction against the Respondent No.1 from raising any construction on the suit property. The suit property is described as Gat No.31, admeasuring 36R at Mouje Mhakve, Taluka Kagal, District Kolhapur. The Petitioner filed an application vide Exhibit-5 in the said suit for interim relief. The said application was rejected by the Trial Court vide order dated 04/07/2022. Thereafter, the Petitioner challenged that order before the District Court; which is dismissed by the impugned order.

4. Learned counsel for the Petitioner-original plaintiff submitted that, at the first instance, the Appellate Court had granted status-quo and thereafter when the final order was passed rejecting the Appeal, no reference was made to its own observation made in the interim order. He further submitted that the Petitioner had raised many grounds, but they were not separately considered. He invited my attention to the two sale deeds, both dated

22/06/2021. They were executed on the same date. According to learned counsel for the Petitioner, those sale deeds described the same boundaries, but the Gat numbers mentioned in those two sale deeds are different; that indicates that the Respondent No.1 is trying to take advantage of those two sale deeds and trying to mix the lands in Gat No.31 and 32. Those sale deeds are between the Respondent No.1 as the purchaser and Ganpati Patil and others as sellers. He further submitted that the Respondent No.1 is claiming his ownership on Gat No.32 through a sale deed of 1985, wherein the Respondent No.1's father was a party. However, the boundaries were not described in that sale deed and, therefore, the Respondent No.1 should be restrained from carrying out construction in the disputed area.

5. Learned counsel for the Respondent No.1, who is the contesting respondent, submitted that the suit is misconceived and it is deliberately filed to harass the Respondent No.1. He submitted that, as of today, the Respondent No.1 has to reside in the cattle shed in spite of having permission of the Gram Panchayat to construct on that land. He submitted that, both Courts below have

concurrently held in favour of the Respondent No.1 in refusing the interim relief to the Petitioner and, therefore, the orders which are passed on sound reasoning should not be disturbed.

6. I have considered these submissions. The Trial Court in its order has observed that, if the Plaintiff succeeded in his main claim, the construction carried out by the Respondent No.1 can be removed. The Respondent No.1 was carrying out the construction at his own risk. It was also observed that the Petitioner had filed the suit against the Defendant No.6 who had already passed away and the Petitioner had not taken any care to bring the legal heirs of the Defendant No.6 on record. There is nothing to show that the adjacent co-sharer of the suit land has objected to the construction carried out by the Respondent No.1.

7. The Appellate Court also agreed with the Trial Court and in addition, he observed that the Plaintiff (Petitioner) had suppressed the material facts. He has suppressed the description of all the joint family properties and the description of the members of the joint family who are entitled to get shares in those

properties. The Plaintiff had not obstructed the Defendant No.2 who had purchased other property when he constructed a bungalow on the suit property. Learned Appellate Judge observed that, he found no prima facie case in favour of the Plaintiff. The balance of convenience did not lie in his favour and no irreparable loss would be caused to the Plaintiff, if temporary relief was not granted to him. It was further reiterated that, if the Plaintiff succeeded in proving his case, the construction of the Defendant would not be an impediment in granting final relief in the suit.

8. I see no reason to take a different view from the concurrent view taken by both the Court i.e. the Trial Court and the Appellate Court. As far as, the submission of learned counsel for the Petitioner regarding two sale deeds executed on 22/06/2021 is concerned, it requires leading of evidence and consideration regarding the effect of those two sale deeds on suit properties. The plaint itself does not make any reference to those sale deeds. There are no necessary pleadings. The sellers Ganpati Patil, Ramchandra Patil, Ananda Patil, Rangrao Patil, Vishwas Patil and Laxmibai Patil who have sold that portion of Gat No.31 are

not even made parties in the suit regarding their shares. Therefore, at this stage, the reliance of learned counsel for the Petitioner on those two sale deeds in support of his submission is baseless. As rightly observed by both the Courts, the Petitioner will not suffer irreparable loss if the interim relief is not granted to him. As observed earlier by the two Courts, the construction can be removed as the Respondent No.1 continued with the construction at his own risk.

9. Considering all these aspects, I do not see any reason to interfere with the impugned order. In fact, it would be better if the suit itself is decided expeditiously in stead of the parties fighting for the interim relief. Hence, the Trial Court is directed to conclude the trial within nine months from today.

10. The petition is dismissed.

(SARANG V. KOTWAL, J.)