

SA Pathan

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

WRIT PETITION NO.13385 OF 2023

Nagnath Shivaji @ Shivdas Kakade &
Ors

... Petitioners

V/s.

Pravin Subhash Bhore

... Respondent

Mr. Abhijit Joshi i/by Ms. Varsha S. Sawant & Ms.
Advait Wajaratkar, for Petitioner.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 2, 2023

P.C.:

1. The petitioners are the original defendants against whom the respondent filed a suit for injunction restraining the petitioners from disturbing his possession as owner over the suit property i.e. 1(B).

2. According to the respondent, he purchased suit property from father of defendant No.1 on 12 August 1997. Accordingly, revenue entries were effected. However, in subsequent sale deed in relation to adjoining lands, boundaries are wrongly mentioned based on which the defendants are disturbing possession of plaintiff over the suit property.

3. The petitioners filed their reply and written statement pointing out that the plaintiff was never put in possession of

specified portion in furtherance of sale deed in the year 1997. The exact measurement of the suit property is not done and, therefore, the plaintiff cannot claim injunction in relation to specified portion as described in the suit property.

4. Moreover, the plaintiff's is illegally claiming compensation in relation to the suit property which is affected of land acquisition proceeding. The petitioners, therefore, prayed for dismissal of suit.

5. The Courts below granted relief of temporary injunction based on the proceedings taken out by Revenue Authorities under the provision of Maharashtra Land Revenue Code, 1966. The Trial Court recorded finding that the property purchased by the defendant has been allotted independent *gat* number. A draft map signed by defendant No.1 and his brother was also prepared which indicates exact location of the suit property. Therefore, the Courts below recorded a finding that the suit property is in possession of the plaintiff.

6. Learned Advocate for the petitioner submitted that in absence of sketch or map of the property, the Courts below ought not to have granted the injunction. The Trial Court has discussed draft agreement between the parties signed by defendant No.1 and his brother which indicates existence of the suit property. For consideration of temporary injunction application, the Court is required to arrive at *prima facie* conclusion about the location of the suit property. Based on such agreement between the parties, the Courts below have arrived at the conclusion that the suit property is identified, it will be open for the petitioner during trial

to raise such issue which needs to be decided by the Trial Court at the time of hearing of the suit.

7. Learned Advocate for the petitioner submitted that by rectification, boundaries of property conveyed in their favour has been changed and the effect of grant of injunction amounts to interference in the defendants possession over the suit property. However, the Trial Court based on agreement between the parties, signed by defendant No.1 and his brothers has recorded a *prima facie* about the location of the property. Hence, at this stage such adjudication is sufficient to grant injunction against defendants.

8. In so far, judgment of this Court in the case of **Godawaribai Purushottam Bawaskar Versus Sitaram Bhagwan Paithane & Ors.**, reported in (2020) (3) Mh. L. J. 102 is concerned, the judgment arises out of a suit for possession. In the facts of the case, the plaintiff described the suit property as per the boundaries in the sale deed. Such description at *prima facie* stage is sufficient to grant injunction in favour of the plaintiff as *prima faice*, he has shown possession over the suit property. Hence, there is no merit in the writ petition. The writ petition stands disposed of. No costs.

9. Considering the reasons assigned by the Courts below, in my opinion, the Courts below have recorded *prima facie* finding that the plaintiff is in possession of the suit property. Therefore, in absence of perversity, no interference is called for under Article 227 of the Constitution of India.

10. However, it is made clear that the order of injunction granted by the City Civil Court in a suit for permanent injunction

cannot be on a basis of claim for title over the suit property in a land acquisition proceeding. If, a party claims title over the suit property to claim share in the land acquired, such party will have to produce independent material in the form of either title document or substantive judgment of the Superior Court which answers in the favour of a party. In so far as apprehension of petitioner that, the plaintiff based on impugned orders is claiming right under the provisions of Land Acquisition Act, has no legal basis.

(AMIT BORKAR, J.)