

AGK

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

**SECOND APPEAL NO.312 OF 2019
WITH
CIVIL APPLICATION NO.617 OF 2019**

Trimbak Dattatraya Kulkarni,
deceased through LRs

Parshuram Trimbak Kulkarni & Ors.

... Appellants

V/s.

The Brahan Maharashtra Sugar
Syndicate Ltd. Shripur & Ors.

... Respondents

Mr. Ajay A. Joshi for the appellants/applicants.

Mr. Surel S. Shah for the respondents.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 7, 2023

P.C.:

1. On consideration of the impugned judgments, following substantial question of law arises for consideration:

“Whether the Courts below were justified in refusing to grant injunction in favour of the plaintiff by misconstruing averment in the registered sale deed that the plaintiff is confirmed to be in possession who was inducted by virtue of agreement to sell, and particularly when Appellate Court records a finding that the plaintiff is in possession of middle portion of Gat No.79.”

2. The second appeal arises out of a suit for injunction filed by

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the appellant in relation to Gat No.79, more particularly described in paragraph 1 of the plaint. The Trial Court dismissed the suit. However, in the Appellate Court, Taluka Inspector of Land Records was appointed to ascertain location of the suit property. A report furnished by the Taluka Inspector of Land Records was placed on record of the Appellate Court. The report indicates that measurement was carried out on 15 January 2018. Based on report placed on record, it appears that the plaintiff is claiming injunction in relation to property described by letters 'C', 'D', 'G' and 'H' in the report. The Appellate Court records a finding that the plaintiff is in possession of middle portion of the suit property towards north side.

3. It appears that the case of the defendant is that they are in possession of portion 'G', 'H', 'K' and 'L' described in map produced on record before the Appellate Court.

4. Since the plaintiff, on instructions, makes a statement that the plaintiff restricts his claim only to the portion described in the Taluka Inspector of Land Records report by letters 'C', 'D', 'G' and 'H' and since the defendants are claiming to be in possession of portion 'G', 'H', 'K' and 'L', the second appeal can be disposed of by substituting the decree as under.

5. The defendants are restrained from disturbing possession of the plaintiff over the suit property Gat No.79 ad-measuring 1-H 65-R as described in paragraph 1 of the plaint. However, such injunction shall be in relation to property described by letters 'C', 'D', 'G' and 'H' and not 'G', 'H', 'K' and 'L'.

6. The second appeal stands disposed of in above terms. No costs.
7. In view of disposal of the second appeal, civil application does not survive and the same stands disposed of as infructuous.

(AMIT BORKAR, J.)