



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 6939 OF 2013
IN SA/395/2013

JAIDEO BHAURAO PATIL
VERSUS
HIMMAT BHAURAO PATIL

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Mr. Sawant Amol S., Advocate for Appellant
Mr. Shah Subodh, Advocate for the Respondent

CORAM : Y. G. KHOBRAGADE, J.
DATE : 18th April, 2024

ORDER:

1. Heard the learned counsel appearing for the respective parties at length.
2. By the present application, the appellant/original plaintiff prayed for restraining respondent/original defendant from causing obstruction to his possession over the suit property during pendency of the appeal.
3. The learned counsel for the appellant/ plaintiff submits that the plaintiff is owner of Gat No. 506/1 admeasuring 70 R situated at Chaugaon Tq. & Dist. Dhule. The present appellant/original plaintiff and respondent /original defendant are real brothers. Gat No. 506 admeasuring 1 H 40 R was owned by their father Bhaurao Patil and during his lifetime, partition of Gat No. 506 was effected. In the partition, southern portion of Gat No. 506 admeasuring 70 R was

allotted to the Plaintiff. Subsequently, the said portion of land was renumbered as gat No. 506/1. Northern portion of the land admeasuring 70 R was allotted to the share of the defendant which was renumbered as Gat No. 506/2. After effecting partition, mutation entry was recorded on 28.07.2004 in the revenue record and since then, they are in possession of their respective portions of the suit land.

4. According to the plaintiff, the defendant caused obstruction to his possession over the said land. Therefore, he instituted Regular Civil Suit No. 123 of 2007 and prayed for declaration. On 27.02.2019, the learned Trial Court partly allowed the said suit and permanently restrained the respondent/defendant from causing obstruction to the possession of the plaintiff over the suit land. Being aggrieved by the said judgment and decree, the defendant/respondent filed Regular Civil Appeal No. 57 of 2010 before the First Appellate Court. On 18.10.2012, the learned First Appellate Court allowed the appeal and set aside the judgment and decree dated 27.02.2019 passed in Regular Civil Suit No.123 of 2007. Therefore, the appellant/plaintiff apprehend that the respondent/defendant may interfere with his possession over the suit land and stated that there is every possibility of the respondent/defendant may execute the decree passed by the learned First Appellate Court.

5. Per contra, the learned counsel appearing for the respondent defendant submits that the respondent is in possession of the said property since 2003 and in case, the respondent is restrained, in that even, he would suffer irreparable loss.

6. On 25.09.2023, this Court admitted the appeal on substantial questions of law and the matter is pending for final hearing. Therefore, if the respondent/defendant execute the judgment and decree passed by the First appellate Court, in that event, the the claim in the first appeal would become infructuous.

7. Since the issue in respect of possession over Gat No. 506/1 and Gat No. 506/2 arises and as such the appellant and the respondent appear to be in possession of the said land, it would be just and proper to direct both the parties to maintain status quo in respect of their possession, during the pendency of the Appeal.

8. Civil Application is accordingly disposed off

(Y. G. KHOBRAGADE, J.)

JPChavan