



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

930 WRIT PETITION NO. 2201 OF 2020

SK NAZIR SK RASHID AND OTHERS
VERSUS
SUBHASH KESHARCHAND PATNI

...

Advocate for the Petitioner :
Ms. P. P. Wangikar h/f .Mr. Gore Ravindra Vitthal
Advocate for Respondent : Mr. N. S. Jaju

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CORAM : ARUN R. PEDNEKER, J.

DATE : 08th FEBRUARY, 2024

PER COURT:

1. Heard.
2. The petitioners are challenging the order at Exhibit-47, wherein the trial court has allowed the application of the plaintiff / respondent and granted police protection to the plaintiff / respondent for preventing obstruction caused by the defendants / petitioners on paying the requisite charges to the police.
3. Ms. P. P. Wangikar holding for Mr. Gore Ravindra Vitthal, learned counsel appearing for the defendants / petitioners herein relies upon the Judgment of this court in *Writ Petition No.7215 of 2013, dated 13.02.2024 (Bhimsing S/o Harchand Reknod and another Vs. Ramrao S/o Deorao Sakhale and another)* and submits that the police protection

is not to be casually granted and it should be granted only when the trial court decides that there is obstruction continued at the hands of the party against whom an injunction is clamped and the trial court comes to the finding that such obstruction is de-facto at the instance of the person against whom injunction order is passed that the police protection can be granted. The learned counsel for the petitioners submits that the order of injunction granted on 18.07.2018 and the order for police protection is made on 20.01.2020 and there is only one instance of obstruction being created by the defendants / petitioners. Thus, it cannot be said that there is continuous obstruction at the hands of the defendants / petitioners and the order of the police protection is bad in view of the Judgment of this court reported in *Writ Petition No.7215 of 2013, dated 13.02.2014*.

4. Per contra, Mr. N. S. Jaju, learned counsel appearing for the respondent has taken me to the copy of the writ petition filed specifically at para 8, as under:-

“8. The petitioners submit that said application was opposed by the petitioners / defendants by filing their say on the ground that without giving evidence plaintiff has filed false application. Plaintiff is not having possession in suit property. There is possibility that plaintiff with the help of police officer will get property of the defendants. Therefore, defendants prayed for rejection of the application of the plaintiff.”

The learned counsel appearing for the respondent submits that it is the case of the petitioners even before this court that they are in possession of the suit property notwithstanding injunction order being clamped against them. The learned counsel relies upon the Judgment of this court in the case of **Khashibai Dadu Jagtap Vs. Satyawar Baban Mane**, Writ Petition No.3862 of 1994, dated 09.07.1997, wherein this court at para 4 held as under:-

“4. ...Whatever may be the reason, today there is an injunction order in favour of the petitioner. In the circumstances if the respondent in spite of the order of the injunction was interfering with the right of the petitioner to cultivate the land, the Court in such circumstances considering the age of the petitioner and the status ought to have assisted the petitioner by granting police protection. The Court by rejecting the same has acted contrary to law and has failed to exercise the jurisdiction vested in it and consequently the order dated 13th July, 1994 is set aside.”

5. The learned counsel placed reliance on the Judgment of **Khashibai (supra)**, and submits that once injunction order is passed and it is found that the person against whom an injunction order is clamped notwithstanding the injunction order is interfering with the possession of the property then police protection order has to be granted.

6. Having heard the learned counsel for the parties and from perusal of the para 8 of the writ petition as noted above, it is apparent that the petitioners are claiming to be in possession of the suit property

notwithstanding the finding of the trial court that the plaintiff / respondent is in possession of the suit property and that there is an order restraining the petitioners / defendants from entering in the suit property. The contention of the petitioners that they are in possession of the suit property runs counter to the order passed by the trial court and it is apparent that there would be obstructions at the hands of the petitioners. Thus, the police protection granted cannot be said to be erroneous.

7. In view of the same, I do not see any merit in the petition and the same is dismissed. In absence of any challenge to the order of injunction granted by the trial court, I have to proceed on the basis that the original plaintiff / respondent herein is in possession of the suit property. The learned counsel for the petitioners seeks leave to challenge the order of injunction of the trial court. It is open for the petitioners to challenge the order of the trial court. However, if, such an appeal is filed, I have not observed anything in the matter, on merits.

8. The writ petition is accordingly disposed of.

[ARUN R. PEDNEKER, J.]

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