



IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

918 WRIT PETITION NO. 9403 OF 2023

Suresh Dattatrya Wable

....Petitioner

VERSUS

Gajanan Namdeo Shinde & another

.....Respondents

.....

Ms. Anjali Dube, Advocate for the Petitioner.

Mr. D. P. Palodkar and Mr. N. S. Tekale, Advocate for Respondents.

**CORAM : R. M. JOSHI, J.**

DATE : 20<sup>th</sup> JULY, 2024.

PER COURT :

1. By consent of both sides, heard finally at admission stage.

2. Petitioner is Defendant in Regular Civil Suit No. 117/2019 filed by original Plaintiffs seeking injunction in respect of property described in paragraph No. 1A of the plaint. The facts as appear from record indicate that the suit is filed by Respondents/Plaintiffs with averments that they are the owners of the property described in Paragraph No. 1 A of the plaint and that Plaintiffs claim to be the owners of 73R land whereas Defendant claims himself to be owner of property admeasuring 3R from Gat No.

1003. It is alleged that the Defendant caused interference in the possession of Plaintiffs over this property. It is also alleged that the property of the Defendant is acquired and has gone into expansion of roads and as such no property exists in the name of Defendant. In paragraph No. 6 of the plaint it is stated that on 18.03.2019, Defendant had got the alleged land measured and the boundaries were fixed and on the basis of said boundaries he is trying to make a claim that this portion of property of Plaintiffs to be his own. In this backdrop, injunction is sought.

3. Defendant filed written statement and opposed the said contention by claiming that the measurement carried out by the TILR after issuance of notice to Plaintiffs shows that there exists property of Defendant. He denied any attempt of encroachment or causing interference in the possession of Plaintiffs.

4. Learned Trial Court rejected the application (Exhibit 5) by order dated 28.10.2021. Learned District Court however reversed the said finding by order dated 13.04.2023 and clamped injunction against the Defendant restraining from disturbing peaceful

possession of Plaintiffs over the suit property-A and not to transfer suit property-B by showing wrong boundaries till disposal of the suit.

5. Learned counsel for Petitioner submits that perusal of the application indicates that the suit is filed by Plaintiffs with a contention that no property of Defendant exists in gat No. 1003 and as such he has no right to enter in the property and to cause interference in the possession of Plaintiffs. It is her further submission that there is prima facie evidence on record in the form of map prepared by TILR as well as 7/12 extracts indicating existence of 3R land in Gat No. 1003. It is thus argued that in ignorance of this fact, learned Appellate Court has granted injunction by misinterpreting measurement and map prepared by TILR. It is also claimed that there is no prayer in the plaint seeking injunction against Defendant from transferring suit property to third party.

6. Learned counsel for Respondents/Plaintiffs supported the impugned order by contending that the Trial Court though has taken into consideration the documents i.e. map and 7/12 extracts, however, the said documents are not rightly interpreted which has been done by the Appellate Court. It is his submission that the

Defendant has already sold his alleged property by executing registered sale-deed dated 27.04.2023 and as such he has no right, title and interest in the suit property. Resultantly, he cannot take any exception to the impugned order. Learned counsel for Respondents submits that he has already filed application for amendment of the plaint to incorporate this averment and prayer.

7. Though there is no dispute about the fact that Plaintiffs have claimed that the property of Defendant does not exist, it is however specifically averred in paragraph no. 6 of the plaint that after conducting measurement of the land, Defendant is trying to claim in respect of the property belonging to the Plaintiffs. Needless to say that in order to appreciate case sought to be made out by Plaintiffs, the entire plaint needs to be considered as a whole and not in piecemeal. As far as documents placed on record in the form of map as well as 7/12 extracts are concerned, as rightly observed by the Appellate Court, the said map indicates that the claim of Defendant in respect of his property differs from the revenue record. In such circumstances, if the Court accepts the contention of Plaintiffs that on the basis of such map the Defendant is trying to force himself into the property of Plaintiffs, grant of injunction restraining Defendant

from disturbing possession of Plaintiffs, it cannot be said to be unjustified. However, as far as injunction granted by Appellate Court in order to prevent Defendant from transferring the suit property -B is concerned, perusal of plaint indicates that no such prayer was made before the Trial Court. In absence of any pleading it was not open for the Appellate Court to pass order of injunction. Mere filing of application for amendment to plaint at later point of time would not be sufficient to justify impugned order to that extent, as interim relief can be granted in aid or consequence of main relief. In absence of any pleadings in the plaint, grant of interim relief is not justified.

8. Apart from this, in view of transfer of the property by Defendant to third party, Petitioner now cannot claim any right, title or interest in the suit property B, as such, no prejudice muchless any irreparable loss will be caused to the Defendant if the order of injunction of not to cause interference in suit property of plaintiff is maintained. Portion of the operative part of the order to the extent of grant of injunction against Defendant not to transfer suit property-B by showing wrong boundaries till disposal of the suit stands set aside.

9. Petition is partly allowed in above terms.

( R. M. JOSHI)  
Judge

dyb