

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15981 OF 2023

Sukhdeo Dattatray Thorve & Ors.

.. Petitioners

Versus

Nanda Prakash Thorve & Ors.

.. Respondents

WITH

WRIT PETITION NO. 15985 OF 2023

Sukhdeo Dattoba @ Dattatray Thorve

.. Petitioner

Versus

Nanda Prakash Thorve & Ors.

.. Respondents

.....

- Mr. Ajay A. Joshi for Petitioners
- Mr. Abhijit B. Kadam for Respondents

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 6, 2024

P. C.:

1. Heard Mr. Joshi, learned Advocate for Petitioners and Mr. Kadam, learned Advocate for Respondents.

2. Present Writ Petitions takes exception to the common judgment & order dated 21.11.2023 passed in Misc. Civil Appeals (**MCAs**) allowing both the Appeals in respect of the orders passed by the learned Trial Court thereby reversing the orders of the learned Trial Court. Dispute is between the family members whose ancestral properties have already been partitioned and both parties are enjoying separate properties which are adjacent to each other. Reference to

Sukhdeo means Sukhdeo and Others and reference to Nanda means Nanda and others in this order.

3. I have heard Mr. Joshi and Mr. Kadam, learned Advocates for the respective parties and with their able assistance perused the pleadings in the case. Briefly stated RCS No. 500/2021 is filed by Sukhdeo Dattoba @ Dattatray Thorve against Nanda Prakash Thorve and Ors., the legal heirs of Prakash Thorve. Sukhdeo and Prakash Thorve are real brothers. This Suit is filed for injunction and declaration that Sukhdeo is entitled to partitioned property bearing Gat No. 247/1 and for seeking injunction against the Defendants from disturbing the possession of the Plaintiff. Simultaneously RCS No. 522/2021 is filed by Nanda Prakash Thorve and Ors against Mr. Sukhdeo Dattatray Thorve & Ors. seeking a declaration that the well situated in Gat No. 247/1 and the approach road upto the well and separate Gat No. 246 which belongs to Nanda Prakash Thorve are common properties along with certain other reliefs seeking demarcation. In this Suit, Sukhdeo has filed a Counterclaim seeking a declaration that Gat No. 247/1 belongs to the exclusive ownership and possession of Sukhdeo. It needs to be stated herein that there is a well which provides water for cultivation and for the business of both parties and also for their livelihood which is located in Gat No. 247/1.

4. Mr. Joshi would contend that partition of the agricultural land i.e. original Gat No. 247 was effected by a registered Partition Deed on 01.01.1991 leading to division of the said Gat Number into two Gat Numbers; viz. 247/1 and 247/2. He would submit that under the Partition Deed, Gat No. 247/1 was allotted to Sukhdeo and Gat No. 247/2 was allotted to Prakash. Resultantly Mutation Entry No. 986 dated 01.01.1991 was also effected in respect of the above.

5. At Exh. 5 stage, both parties have contested vehemently against each other. It is seen that Exh. 5 was filed by Nanda in her Suit. Sukhdeo also filed Application below Exh. 19 in Nanda's Suit seeking injunction. By order dated 18.01.2022, learned Trial Court allowed the Application below Exh. 5 in Sukhdeo's Suit while rejecting Application below Exh. 5 in Nanda's Suit. Application below Exh. 19 for injunction in favour of Sukhdeo also came to be allowed by this order. Being aggrieved by the same, Nanda filed MCA No. 21/2022 and MCA No. 22/2022 to challenge the rejection of her Application below Exh. 5 and allowing Application below Exh. 19. By the impugned judgment & order dated 21.11.2023, learned District Court allowed the Appeals and reversed the orders passed by the learned Trial Court in both the Suit proceedings. Resultantly parties are before me.

6. It is seen that both the parties are carrying on their business as well as cultivation on the Suit lands. From the map tendered by Mr. Joshi and appended to the Petition, it is seen that there is a well which is shown in Gat No. 247/1 and in his usual fairness, he would submit that at the interim stage, Defendant i.e. Nanda can continue to use the water from the Well until the decision in the Suit proceedings filed by the parties is delivered. He would however urge the Court to clarify that such use of the water from the well by Nanda until the decision in the Suit proceedings should get the imprimatur of Court or any certification by the Court that Defendant Nanda is entitled to or has a preemptive right to use the water from the well situated on Gat No. 247/1. He would submit that the well is in fact situated in the middle of Gat No. 247/1 and in that view of the matter, the Suit proceedings have been filed. It is further seen that Nanda is also the owner of Gat No. 246 which is immediately below Gat No. 247/1. The said position is clearly depicted in the said map. He would submit that the approach road to Gat No. 246 is also through Gat No. 247/1, however in view of the prayer for injunction and declaration prayed for by Plaintiff Sukhdeo, in the event if the Plaintiff succeeds then Defendant Nanda would not be entitled to use the said approach road to Gat No. 246 through Gat No. 247/1. However he would submit that until both the Suit proceedings are finally adjudicated and decided by the learned

Trial Court i.e. Suit filed by Sukhdeo as also the Suit filed by Nanda, considering that the parties are closely related and relatives, Plaintiff Sukhdeo would have no objection if Defendant Nanda uses the approach road to Gat No. 246 through Gat No. 247/1 but it shall be subject to the final decision in Suit No. 500/2021. The suggestion and the stand taken by Mr. Joshi is fair. This suggestion is put to Mr. Kadam who also agrees that both parties shall be undoubtedly governed by the final decision in Suit Nos. 500/2021 and 522/2021 and allowing Nanda to use the water from the well and the approach road.

7. In view of the above, without delineating any opinion on merits in the matter and in respect of the observations and findings returned in the impugned judgment & order dated 21.11.2023 as also the order dated 18.01.2022, it is clarified that until the final decision in the aforementioned two Suit proceedings is delivered, both the parties are enjoined and restrained from the other party allowing its peaceful enjoyment of their respective Gat numbers as also to use the water from the well. However, this will be with a caveat that Plaintiff in Suit No. 500/2021 i.e. Sukhdeo shall permit and allow Defendants i.e. Nanda & Ors. to use the approach road upto Gat No. 246 in the interregnum also until the decision in the Suit is delivered by the learned Trial Court. However while using the approach road,

Defendants Nanda & Ors. are clearly enjoined by this Court not to disturb the possession as also the business activity of poultry of the Plaintiff Sukhdeo and other carried out in Gat No. 247/1.

8. In view of the above directions, it is further clarified that while deciding the Suit proceedings, learned Trial Court shall not be influenced by any of the observations and findings returned by the learned Trial Court in its order dated 18.01.2022 as also by the learned District Judge in its order dated 21.11.2023 and shall decide both the Suit proceedings strictly on merits and in accordance with law. Needless to state that all contentions of both the parties are expressly kept open. It is further clarified that Suit Nos. 500/2021 and 522/2021 shall be heard together and parties shall lead common evidence in both the proceedings before the learned Trial Court. Learned Trial Court is requested by this Court to determine both the Suits as expeditiously as possible and in any event within a period of two years from today after following the due process of law and strictly on merits of the matter.

9. With the above directions, both the Writ Petitions are disposed.

[MILIND N. JADHAV, J.]

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Digitally signed
by RAVINDRA
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