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wp5066

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5066 OF 2025

Mandakini w/o Pralhad Panhale

Age : 55 years, Occu. : Business

R/o. : 81, Jai Vishwambharti Colony,

Garkheda, Tq. & Dist. Aurangabad.

.. **Petitioner**

(Orig. Defendant No. 5)

Versus

1. Dhanji Panchan Patel

Age : 68 years, Occu. : Business,

R/o. : Shriniketan Colony, Jalna Road,

Aurangabad.

2. Mahendra s/o Dhanji Patel

Age : 44 years, Occu. : Business,

R/o. : Shriniketan Colony, Jalna Road,

Aurangabad.

3. Haresh s/o Dhanji Patel

Age : 33 years, Occu. : Business,

R/o. : Shriniketan Colony, Jalna Road,

Aurangabad.

.. **Respondents**

(Orig. Plaintiff Nos. 1 to 3)

4. Aliyar Kha Bane Kha

Age : 63 years, Occu. : Nil,

R/o. : Deolai,

Tq. & Dist. Aurangabad.

5. Akram Kha Bane Kha

Age : 55 years, Occu. : Nil,

R/o. : Deolai,

Tq. & Dist. Aurangabad.

6. Irfan Kha Bane Kha
Age : 53 years, Occu. : Business,
R/o. : Deolai,
Tq. & Dist. Aurangabad.

7. Nasib Kha Bane Kha
Age : 53 years, Occu. : Nil,
R/o. : Deolai,
Tq. & Dist. Aurangabad.

.. Respondents

(Orig. Defendant Nos. 1 to 4)

8. Aslam Kha Abdul Kha
Age : 47 years, Occu. : Business,
R/o. : Deolai Chowk, Village Deolai
Tq. & Dist. Aurangabad.

9. Afsar Kha Abdul Kha
R/o. : Deolai Chowk, Village Deolai,
Tq. & Dist. Aurangabad. [.....Dead]

10. Feroz Kha Abdul Kha
Age : 47 years, Occu. : Business,
R/o. : Deolai Chowk, Village Deolai
Tq. & Dist. Aurangabad.

11. Ahemad @ Amreen Kha Abdul Kha
Age : 43 years, Occu. : Business,
R/o. : Deolai Chowk, Village Deolai
Tq. & Dist. Aurangabad.

.. Respondents

(Orig. Defendant Nos. 6 to 9)

Mr. N. B. Khandare, Advocate h/f Mr. U. L. Momale, Advocate
for the Petitioner

Mr. Subodh Shah, Advocate for Respondent No. 2.

CORAM : KISHORE C. SANT, J.
RESERVED ON : 25th APRIL, 2025
PRONOUNCED ON : 09th MAY, 2025

P C.

1. Heard the parties.
2. By consent the matter is taken up for final disposal at the stage of admission.
3. The petitioner-original defendant No. 5 has come to this court challenging the judgment and order dated 11-04-2025 passed by the learned District Judge-3, Aurangabad below Exh.20 in Misc. Civil Appeal No.73/2024. By way of impugned order the appeal of the petitioner came to be dismissed. The order passed by the learned Trial Judge allowing the application below Exh.5 filed by the plaintiff came to be confirmed.
4. The petitioner is defendant No. 5. Respondent Nos. 1 to 3 are the original plaintiffs. Respondent Nos. 4 to 7 are the original defendant Nos. 1 to 4.

5. The plaintiffs purchased land adm. 80-R from out of Gut No. 333 from village Gandheli, Aurangabad. The said property was purchased from defendant Nos. 1 to 4. Respondent Nos. 1 to 4 were having total 4-H 75-R land forming Gut No.333. While purchasing the land 80-R land was mortgaged with one bank. It was represented that the said loan was clear. It is their further case that though defendant No. 5 is only adjacent owner and is not concerned with the land purchased by the plaintiff has threatened the possession of the plaintiff. Suit was therefore filed seeking injunction restraining all the defendants from interfering and obstructing the peaceful possession of the plaintiff. Defendant No. 5 appeared denying allegation of the plaintiff. It is the case of the defendant No.5 that he is the owner of the land from same Gut number. He has purchased four acres land from his predecessor in title. In the sale deeds of the parties no specific boundaries are shown. As regards other purchaser from Gut No.333 are concerned sale deeds while showing boundaries it is only shown that on the West there is land Gut No. 329, on the East land Gut No.334, North and South there is

land of Girdhari from Gut No.333. It is the main contention of the defendant, there is no proper identification of the property and therefore, plaintiff cannot seek injunction against the co-owners of the property.

6. The learned trial court on hearing the parties recorded that the plaintiff has become rightful owner of the property. It recorded that there is threat of dispossession or obstruction to his possession at the hands of defendant No.5 and granted injunction. It is considered that the plaintiff have purchased the suit land prior to defendant No.5. Plaintiffs are held to be in possession of the suit property since 2016. There is no dispute regarding internal boundaries between the plaintiffs and defendants. It is also observed that the dispute regarding internal boundaries cannot be decided only on the basis of 7/12 extract. Said order dated 10-05-2024 is carried in Misc. Civil Application by the present petitioner-defendant No.5.

7. The learned District Judge on hearing the parties and going through the material dismissed the appeal by

confirming the order passed on Exh.5. The petitioner/defendant No. 5 has thus come to this court.

8. The learned senior counsel Mr. Khandare vehemently argued the case. He submits that the plaintiffs have not shown boundaries of their land adm. 80-R. The property of defendant No.5 falls in the plaintiffs' portion of 80-R and land Gut No. 334. The plaintiff has not given exact location of their land. Unless specific identity or exact location is shown, no injunction could have been granted. The boundaries shown in the sale deed are the boundaries of entire four acres of land and not piece of 80-R land of the petitioner. There is no specific allegations as to in what manner and as to how the possession is disturbed or there is threat of dispossession. In the pleading it is stated that vendors of the plaintiff represented that entire Gut No.333 belongs to them and 80-R portion is part of the said land. Main submission is that the plaintiffs have not given sufficient and correct description of the suit property as required under order 7 Rule 3 of CPC. On irreparable loss it is submitted that defendant No.5 is the owner of 4-A of land and this is not disputed. The

petitioners have purchased the share from One Suryabhan who happens to be son of original owner namely Khandu. The property of deceased Khandu was partitioned amongst three sons into Suryabhan and about the total there is no dispute of Suryabhan. There is no irreparable loss to the plaintiff. He submits that both the courts have failed to appreciate this material aspect. He submits that sale deed dated 16-04-1990 in favour of predecessor in title is of the same day and at the same time. Merely because serial numbers are different the appellate court has wrongly held that later sale deed is taken as subsequent sale deed. The court wrongly made reference to the bank loan and mortgage of some portion of the suit property. If all sale deeds are put together they only shown area of the Gut No. 333. So there is no question of over lapping of any portion. The courts have failed to apply the mind properly. There was a map prepared by the Cadestral Surveyor. However, same is not considered. He submits that the order deserves to be quashed and set aside. He submits that under such circumstances granting injunction is restricting the principles owner and co-

owner of the land from interfering into possession.

9. As against this the learned Mr. Shah- strongly argued that there is no dispute about the ownership of the plaintiff over 80-R land. When the plaintiff purchased the land it was purchased after giving paper proclamation. No any objection was received. There are maps on record. The property is sufficiently described in the map. In the sale deed the boundaries on this are given which are sufficient to identify the exact location of the land. Till 2016 there was no dispute. It is only after defendant No.5 came into picture dispute started. Since the defendant No.5 is not getting frontage of the road in spite of purchase of 4-A land he has started disturbing the possession of the plaintiff. So called measurement of the land is only a farce. The original owner of the land did not report the said partition to the revenue authorities and it is for this reason there is no exact record and the same is vague. Both the courts therefore, rightly have relied upon the recitals and clause in the sale deeds of the parties. Both the courts thus have clearly recorded finding. He lastly submits that when the courts have

concurrently held in favour of the plaintiff there is no propriety in disturbing the said finding and observations. The findings are recorded on the basis of material before the court. He, thus prays for rejection of the petition.

10. The learned advocate for the petitioner relied upon the following judgments :

(i) Ramakant Ambalal Choksi Vs. Harish Ambalal Choksi and others reported in 2024 SCC OnLine SC 3538.

(ii) Mandakini Pralhad Panhale Vs. Dhanaji Pachan Patel and others in Writ Petition No. 6816/2022 dated 04.07.2022.

(iii) Messrs. Trojan and Co. Vs. RM. N. N. Nagappa Chettiar reported in AIR 1953 SC 235.

(iv) Mary Pushpam Vs. Telvi Curusumary and others reported in (2024) 3 SCC 224.

(v) State of Jharkhand Vs. Surendra Kumar Srivastava and others reported in (2019) 4 SCC 214.

(vi) Order passed by the Hon'ble Apex Court in Civil Appeal No. 159/2025 in the case of Krushna Chandra Behera and Ors. Vs. Narayan Nayak & Ors.

(vii) Narmada Bachao Andolan Vs. State of M.P. and another reported in AIR 2011 SC 1989.

11. In the case of Ramakant Ambalal Choksi (*supra*), the Hon'ble Apex Court held that, at the stage of grant of temporary injunction, it is not appropriate for any Court to hold a mini-trial. The burden is on the plaintiff to prove the prima facie case in his favour requiring adjudication at the trial. It is further observed that, prima facie case is not to be confused with the prima facie title which has to be established on evidence of the trial. Mere satisfaction of prima facie case by itself is not sufficient to grant injunction. It be shown that without interference of the Court, there would be irreparable injury caused to the parties seeking relief and there is no other remedy available to the party except one to grant injunction requiring protection from the apprehended injury or dispossession. He

has to show that there is likelihood injury.

12. In the case of **Messrs. Trojan and Co.** (*supra*), the Hon'ble Apex Court held that, the decision of the case cannot be based on grounds outside the pleadings of the parties. The Court has to see the case that is pleaded.

13. In the case of **Mary Pushpam** (*supra*), in that case it was a suit filed for declaration of title, possession and permanent injunction. One of the said issues was as regards entitlement of plaintiff to relief of permanent injunction. The Hon'ble Apex Court on careful examination of the judgment of the learned Trial Court and the learned First Appellate Court noticed that, there was no actual boundary or the measurement of the property recorded. The case of the plaintiff in that case was only that the plaintiff had purchased 8 cents of open piece of land and defendant therein had raised construction over some adjoining land. It is observed that, in the suit for possession the plaintiff has to describe the property in question with accuracy and all details of measurement and boundaries and the said was

lacking in the suit. The suit in that case was dismissed on the ground of identifiability of the property.

14. In the case of State of Jharkhand (*supra*), the Hon'ble Apex Court was considering the principles of Order 39 Rule 1 and 2 of the Code of Civil Procedure. In that case, the plaintiff filed a suit seeking permanent injunction restraining defendants from interfering with their possession. The learned Trial Court specifically held that the plaintiff failed to describe the specific area/portion of the suit property allegedly in their possession over which the construction was going on. In that view, the learned Trial Court held that no irreparable loss would be caused which cannot be compensated in terms of money. In an appeal, the learned District Court dismissed the appeal holding that the plaintiff failed to demarcate the suit property in the plaint. The Hon'ble Apex Court thus held that, the plaintiff failed to describe this specific area which was allegedly in their possession. Considering all this, the judgment of the Single Judge of the Jharkhand High Court was set aside by which the High Court had granted injunction.

15. In the case of Narmada Bachao Andolan (*supra*), the Hon'ble Apex Court observed that, pleadings and particulars are required to enable the Court to decide the rights of the parties in the trial. The pleadings help the Court to narrate the controversy involved. The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during the trial.

16. After hearing the parties and going through the judgments, this Court has to find out as to whether the plaintiff has made out a case for grant of injunction. So far as the ownership of land, there is no dispute between the parties. As per the petitioner's case, the original entire land of Gat No. 333 was owned by one Khandu. He partitioned the said land into three sons namely Karbhari, Suryabhan and Girdhari. Karbhari was given the land on the north - west upper portion. Suryabhan was given north-east upper portion and Girdhari was given a straight on the south side of the land. Each was given four acres of land. Karbhari sold entire land of four acres to one Banekha

on 16.09.1990. At the same time, Suryabhan also executed sale deed of entire land of four acres in favour of one Abdul khan. Both the sale deeds were executed on the same date and at the same time. The sale deed executed by Karbhari is numbered as 3488 and sale deed executed by Suryabhan is numbered as 3489. The legal heirs of Banekha sold only 80 R of the land to the plaintiff by sale deed dated 28.10.2016. The petitioner/defendant No. 5 purchased the entire land of four acres on 27.12.2021. Girdhari also sold two acres of land to one Mr. Dandge, one acre of land to one Mr. Deshmukh and one acre of land to one Mr. Patil. No one has disputed anybody's sale deed and ownership. The question is only about the location of the plot and more particularly, location of the plaintiff's 80 R land.

17. In the sale deed of the plaintiff the boundaries shown are, on the east land Gat No. 334, west - part of Gat No. 333 sold by legal heirs of Banekha to one Kunkulol and on the south part of Gat No. 333, and on the north it is shown as north road whereas, the land of the petitioner/defendant No. 5 the

boundaries are given are, towards east – land Gat No. 334, on the west – part of Gat No. 333 sold by legal heirs of Banekha, on the south – part of Gat No. 333 and on the north – Government road. Thus, in both the sale deeds north side boundary is given of the road and the east boundary is mentioned as Gat No. 334. On the south, it is shown to be part of Gat no. 333. However, exact location of the land in Gat No. 333 is not shown. The learned Trial Court while deciding the application has observed that, no location of the property is exactly identifiable. It mainly proceeded on the basis that, the sale deed in favour of the plaintiff is prior in time i.e. 28.10.2016 whereas, the petitioner/defendant No. 5 has purchased the property on 27.12.2021. The sale deed in favour of predecessor in title of the plaintiff is earlier in point of time. There was no dispute about any of the internal boundaries. The dispute started only after the defendant No. 5 purchased the land. It is observed that, 7/12 extract in favour of defendant No. 5 would not show the exact location. It is held that, the plaintiff is in possession on the land and granted injunction.

18. The learned Appellate Court also recorded that there is no dispute about the origin of source of title of the respective endorse of both the parties. There are also revenue entries in the name of both the parties. It is also observed that, both the parties have not produced on record any document to show that which side portion is purchased by the parties. It is specifically observed that, old revenue record is not helpful to ascertain the particulars of land of three sons of Khandu Dagadu. It is also observed that the map does not show the location of subdivisions of land Gat No. 333. The share of Girdhari is towards extreme south of Gat No. 333 is accepted by the learned Appellate Court. It is further observed that, the sale deed in favour of predecessor of the plaintiff is earlier in point of time and therefore, that will prevail over the sale deed in favour of predecessor in title of the defendants. An affidavit of one Saluba Sangale was considered. The Court considered that, there is measurement of the properties by giving notice to the plaintiff. However, the same is not pleaded in the plaint. The map is prepared for specific cause and in view of Section 83 of the

Evidence Act, the same cannot be considered unless the same is proved except the provided map drawn after measurement for specific purpose. There is no any other map by the public authority. Considering all these, the learned Appellate Court specifically considered that the location of the land is seriously in dispute and considering earlier sale deed, has rejected the appeal of the petitioner/defendant No. 5.

19. From the above discussion, it is clear that, there is serious dispute about the identity and exact location of 80 R land of the plaintiff. It is true that, normally the Appellate Court and even this Court need not interfere with the findings recorded while deciding interim applications if the findings are based on some material. In this case, this Court finds that, both the Courts below have considered mainly the fact that, the sale deed of the predecessor in title of the plaintiff is earlier in point of time. However, both the sale deeds are executed at the same time and on the same date. The Courts have also considered that, loan was given to the plaintiff by the bank to be predecessor in title of the plaintiff and at that time the bank

must have got the measurement done. This is only an inference. The fact that, the exact plot is not identified or exact location is not given is accepted by both the Courts. Both the Courts have also accepted that, about the title ownership of sale deed of any of the parties is not under dispute.

20. Considering all above, this Court finds that, now grant of injunction is against the co-owner of the land in the same Gat No. 333. The exact location is neither pleaded in the plaint, nor any document is produced to show the same. This Court finds substance in the argument of the learned senior advocate that before granting injunction the Courts ought to have made it sure the exact location of piece of land of the plaintiff. So far as the argument of the plaintiff about the sale deed is concerned, the same is not convincing. In any case he has not shown the exact location of the plot.

21. For all these reasons this Court finds that, the learned Trial Court as well as the learned Appellate Court have failed to consider this material aspect and have come to wrong

conclusion. Keeping in view the judgments referred above, this Court has no hesitation in allowing the writ petition.

22. The writ petition, therefore, stands allowed in terms of prayer clause (B).

23. In the facts of the case, the learned Trial Court is requested to dispose of the suit as early as possible and preferably within one (01) year from today.

[KISHORE C. SANT, J.]

LATER ON:

1. At this stage, the learned advocate for the respondents submits that in the trial Court as well as before the Appellate Court there was injunction in favour of the plaintiff/present respondent. In view of the same, he prays for stay to the effect of this order for a period of eight weeks.

2. Request is vehemently opposed by the learned Advocate for the petitioner.

3. However, considering that during pendency of the appeal, there was interim order, this court also had directed to maintain status quo.

4. There shall be stay to the effect of this order for a period of four weeks from today.

[KISHORE C. SANT, J.]

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