

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 16997 OF 2024

SANTOSH
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KULKARNI

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Mohan Dattatraya Gund and ors.

...Petitioners

Versus

Dattatrya Gajendra Gund (deceased) and
ors.

...Respondents

Mr. Niranjan Bhavake, a/w Swamini Thakur, i/b Bhavake and
Associates, for the Petitioners.

Mr. Hrishikesh Shinde, for the Respondents.

CORAM: N. J. JAMADAR, J.

DATED: 8th JANUARY, 2025

ORDER:-

1. Heard the learned Counsel for the parties.
2. The challenge in this petition is to an order dated 4th November, 2024 passed by the learned Civil Judge, Junior Division, Mohol, on an application (Exhibit-91) filed by defendant No.4 – respondent No.4 in RCS/169/2010, whereby the learned Civil Judge was persuaded to direct Mohol Police to provide police assistance to defendant No.4 to cultivate the northern side portion of 81Are land of Survey No.252/2 of village Ashti, Taluka Mohol, District Solapur (the subject property).

3. The learned Civil Judge was of the view that the possession of defendant No.4 over the subject property was protected by an order passed by the District Court on 6th December, 2022 in Misc. Civil Appeal No.131 of 2019. The said order had attained finality. And, yet, the plaintiffs were causing obstruction to the possession of defendant No.4 and restraining her from cultivating the subject land. It was, therefore, necessary to direct the police to provide protection to give meaning and content to the order passed by the District Court in Misc. Civil Appeal No.131 of 2019.

4. Mr. Bhavake, the learned Counsel for the petitioners, would urge that the learned Civil Judge could not have resorted to the inherent powers under Section 151 of the Code of Civil Procedure, 1908 ("the Code") as there is an efficacious remedy under Order 39 Rule 2A of the Code in the event of the breach of the order of temporary injunction. To lend support to this submission, Mr. Bhavake placed reliance on a decision of the Supreme Court in the case of *My Palace Mutually Aided Co-operative Society vs. B. Mahesh and ors.*¹. In the said case, it was *inter alia* enunciated that Section 151 of the Code can only be applicable if there is no alternate

¹ 2022(12) SCALE 230.

remedy available in accordance with the existing provisions of law. Such inherent powers cannot override statutory prohibitions or create remedies which are not contemplated under the Code. Section 151 cannot be invoked as an alternative to filing fresh suits, appeals, revisions, or reviews. A party cannot find solace in Section 151 to allege and rectify historic wrongs and bypass procedural safeguards inbuilt in the Code.

5. Mr. Bhavake, however, fairly submitted that the order passed by the learned District Judge-2, Solapur, in Misc. Civil Appeal No.131 of 2019 restraining the plaintiffs from causing obstruction to the possession of defendant No.4 over the subject property, has attained finality. The thrust of the submission of Mr. Bhavake was that the alleged breach of the said order could not have been remedied by resorting to the provisions contained in Section 151 of the Code.

6. I find it rather difficult to accede to the aforesaid submission. It is trite that the inherent powers under Section 151 of the Code cannot be exercised in derogation of the provisions of the Code nor in a situation where a remedy has been specifically provided by the Code. The Court is free to exercise the inherent powers to secure the end of justice or

to prevent abuse of the process of the Court. The limitation on the exercise of the inherent powers are well recognized. In other words, the object of Section 151 of the Code is to supplement and not supplant the other provisions of the Code.

7. In the case at hand, the objection on behalf of the plaintiffs to the impugned order premised on the existence of an alternate remedy under Order 39 Rule 2A cannot be acceded to unreservedly. The Court cannot lose sight of the fact that the order passed by the District Court granting injunction against the plaintiffs has attained finality. The said order has a positive content also. Undoubtedly, under Order 39 Rule 2A, the Court has the power to initiate action for the disobedience of an injunction granted under Rule 1 or 2 of Order 39. However, the said provision does not denude the Court from passing an order to give meaning and content to an order of injunction. The Court has the power to direct the police to provide the requisite protection to ensure that the said order is enforced. To deny such power to the Court would amount to giving a long leash to a party who would commit flagrant disobedience of the order of the Court and

insist that they can only be proceeded against under Rule 2A of Order 39 of the Code.

8. A useful reference in this context can be made to a decision of the Supreme Court in the case of *Tanushree Basu and ors. vs. Ishani Prasad Basu*², wherein it was *inter alia* enunciated that it is a well settled principle of law that Order 39 Rule 1 of the Code is not the sole repository of the power of the Court to grant injunction. Section 151 of the Code confers power upon the Court to grant injunction if the matter is not covered by Rules 1 and 2 of Order 39 of the Code. It is not the law that a party to a suit during the pendency thereof shall take law into his hands and dispossess the other co-sharer. If a party takes recourse to any contrivance to dispossess another, during pendency of the suit, either in violation of the order of injunction or otherwise, the Court indisputably will have jurisdiction to restore the parties back to the same position.

9. From this standpoint, the Court does not find any legal infirmity in the impugned order. I am, therefore, not inclined to interfere with the impugned order.

² 2008(4) SCC 791.

10. Hence, the following order:

: O R D E R :

The petition stands dismissed.

[N. J. JAMADAR, J.]