IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1282 OF 2019

Dadu Sopana Nitinaware ...*Petitioner*

: *Versus* :

Housabai Pralhad Shelar & Ors. ...*Respondents*

Mr. Chaitanya Nikte *a/w. Mr. Prajit S. Sahane, for the Petitioner.*

Mr. Vanraj Shinde *(through V.C.) with Mr. Sachin Padaye, for the Respondents.*

CORAM: SANDEEP V. MARNE, J.

DATED: 1 OCTOBER 2026.

P.C.:

1) The Petition challenges order dated 7 August 2018 passed by the District Judge-5 allowing Misc. Civil Appeal No. 158 of 2018 filed by the Respondents-Defendants. The Appellate Court has set aside the order dated 28 November 2017 passed by the Trial Court granting temporary injunction in favour of the Petitioner/Plaintiff thereby restraining the Defendants from disturbing his peaceful possession of suit property bearing CTS No.73 and from obstructing the Plaintiff from constructing a compound wall around the suit property. While setting aside the order dated 28 November 2017 and withdrawing the

injunction in favour of the Plaintiff, the Appellate Court has granted injunction in favour of the Defendants by allowing Defendants' application at Exh.42 thereby restraining the Plaintiff from obstructing Defendants' possession over House No.175/1 (177/1).

2) I have heard Mr. Nikte, the learned counsel appearing for the Petitioner-Original Plaintiff and Mr. Shinde, the learned counsel appearing for the Respondents-Defendants.

3) Plaintiff claims ownership and possession in respect open land bearing CTS No.73. Plaintiff relies on property card extract in respect of the open land bearing CTS No.73 which bears Plaintiff's name. Plaintiff also relies on Measurement Map in respect of CTS No.173. On the other hand, Defendants claim rights and possession over house property bearing CTS No.175/1 (177/1). Defendants in turn rely upon specimen 8A extract issued by the Gram Panchayat to claim rights in respect of the house property.

4) It is Plaintiff's case that the two properties bearing CTS No.73 and House Property No.175/1 are independent and distinct. The Trial Court granted injunction in favour of the Plaintiff restraining the Defendants from obstructing his possession of CTS No.73 by recording a finding of fact that Defendants' house is not situated in property bearing CTS No. 73. The Appellate Court has not reversed this finding nor has arrived at a conclusion that house of the Defendants is situated within land bearing CTS no.73. The Appellate Court has gone on a tangent by holding that Plaintiff is trying to encroach upon public property. For recording this finding, the Appellate Court did not have any material on record before it indicating that the land in respect of

which rights are claimed by the Plaintiff is a public property. On the other hand, the evidence on record *prima facie* indicates that Plaintiff's name is recorded in respect of CTS No.73. Another error committed by the Appellate Court is in assuming that Plaintiff was seeking mandatory interim injunction which was not factually the case. Plaintiff had sought injunction to restrain the Defendants from obstructing his possession and from obstructing him from constructing a compound wall around CTS No. 73. The Appellate Court has thus recorded perverse findings while withdrawing the order of injunction granted in favour of the Plaintiff. The Appellate Court has also grossly erred in granting injunction in favour of the Defendants without even recording a finding that Defendants' house is situated within the land bearing CTS No.73.

5) It appears that during pendency of the present petition, an application at Exhibit-62 was filed by the Plaintiff seeking appointment of Court Commissioner under Order 26 Rule 10 of the Civil Procedure Code. The application has been allowed by order dated 15 July 2021 and the Court Commissioner (*Deputy Superintendent of Land Records/Officers subordinate to him)* is appointed to measure the land bearing CTS No.73 and land bearing House Property no.175/1. Once measurements are conducted, the picture would be clear as to whether the two properties are distinct or whether the house of the Defendants is located within CTS No.73 or not. In my view therefore, the measurements in pursuance of order dated 15 July 2021 needs to be conducted in an expeditious manner. It is unfortunate that the measurements are still not conducted though the order is passed on 15 July 2021. Accordingly, the Deputy Superintendent of Land Records

needs to conduct the measurements in pursuance of order dated 15 July 2021 as expeditiously as possible and in any case before 31 October 2026. The Report prepared by the Deputy Superintendent of Land Records shall assist the Trial Court in deciding the Suit finally.

6) Till the suit is decided finally, it would be appropriate to set aside Appellate Court's order dated 7 August 2018. I am also inclined to set aside Trial Court's injunction order dated 28 November 2017. This is on account of an express statement made by Mr. Nikte that during pendency of the Suit, the Plaintiff shall not construct compound wall around the land bearing CTS No.73 to avoid any confrontation at the site.

7) In view of the above discussion, I proceed to pass the following order :

(i) The order dated 7 August 2018 passed by the Appellate Court in Misc. Civil Appeal No. 178/2018 is set aside.

(ii) On account of statement made by the Plaintiff that compound wall shall not be constructed around the suit property till decision of the suit on a without prejudice basis, the order dated 28 November 2017 passed by the Trial Court is also set aside.

(iii) The Deputy Superintendent of Land Records shall conduct measurements and shall submit Report before the Trial Court in pursuance of order dated 15 July 2021 on/or before 31 October 2026.

(iv) The Plaintiff shall appear before the Deputy Superintendent of Land Records alongwith copy of this order downloaded from the website of the Court on 5 October 2026 and co-operate for expeditious completion of measurements. Plaintiff shall bear the fees of urgent measurements, if required to be paid.

(v) Similarly, Defendants shall also co-operate with the Deputy Superintendent of Land Records for expeditious conduct of measurements.

(vi) Based on the measurement map prepared by the Deputy Superintendent of Land Records, the Trial Court shall proceed to decide the Suit as expeditiously as possible, preferably within a period of 6 months.

(vii) Both the sides shall co-operate with the Trial Court for expeditious disposal of the Suit without seeking unnecessary adjournments.

8) With the above directions, the Writ Petition is partly allowed and disposed of.

9) All contentions of the parties are expressly kept open to be decided at the time of final decision of the Suit.

[SANDEEP V. MARNE , J.]

NEETA SHAILESH SAWANT
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