

(2011) 11 BOM CK 0103
In the Bombay High Court
Case No : Writ Petition No.8931 of 2011

Shri Subhash Bhiku Navarat

APPELLANT

Vs

Balkrishna Kashiram Shigvan

RESPONDENT

Date of Decision : 17-11-2011

Acts Referred:

Citation : (2011) 11 BOM CK 0103

Hon'ble Judges : R. M. Savant, J

Bench : Single Bench

Advocate : K. K. Jadhav, for the Appellant; Prafulla B. Shah, for the Respondent

Judgement

R M Savant, J.

1 Rule, by consent of the parties made returnable forthwith and heard.

2 The above Petition has been directed against the order dated 27/9/2011 passed on the Application Exhibit 6 which was an application for temporary injunction, pending the Appeal filed by the Respondents herein being Regular Civil Appeal No. 29/11.

3 The Respondent herein is the original Plaintiff who has filed Regular Civil Suit No.4/11 seeking perpetual injunction in respect of the suit property mentioned in plaint Para 1A, and mandatory injunction/possession in respect of the suit property mentioned in Para 1B of the plaint against the Petitioner herein who is the Defendant in the said suit.

4 The Defendant was put in possession of the area of 5 gunthas in Survey No. 26 Hissa No. 2/1B which totally admeasures 81 R. By Sammati Patra, the Plaintiff consented to the Defendant in putting up a poultry shed in the said 5 gunthas, the Plaintiff is also the co borrower with the defendant for obtaining loan from one of the banks. In view of the fact that the Defendant was seeking to encroach upon the balance area of 76 gunthas, that the said suit came to be filed for the relief"s claimed therein. In the said suit, no prayer for interim relief was made.

The Plaintiff however filed an application which was numbered as Exhibit 5 for restraining the Defendant from encroaching upon the suit property mentioned in Para 1A of the plaint. Suffice it to say that the said application for injunction was considered by the trial Court and on the basis of the pleadings and the material on record and primarily considering the fact that the injunction would prejudice running of the poultry business by the defendant held that though no prima face case is out, the balance of convenience being in favour of the Defendant, the interim injunction could not be granted. The trial Court has in its order merely observed that the Plaintiff is not in exclusive possession of 76 gunthas that is the property covered by Para 1A of the plaint. The impugned order does not disclose the reasons for arriving at such a finding.

5 Being aggrieved by the the order refusing temporary injunction dated 26/8/2011 passed by the learned Civil Judge, Junior Division, Dapoli, the Defendants preferred an Appeal before the District Court. In the said Appeal an application Exhibit 6 came to be filed which, as indicated above, has been allowed by the impugned order dated 27/9/2011.

6 The First Appellate Court whilst considering the said Application Exhibit 6 took into consideration the material on record which included Special Civil Suit No. 5/11 filed by the Defendant against the Plaintiff for specific performance of the contract in respect of the alleged agreement of sale, of 30 gunthas of land in which suit the Defendant who is the Plaintiff has claimed possession of the land covered by the said alleged agreement. The First Appellate Court also took into consideration the Panchanama dated 5/1/2011 and recorded a finding that the said circumstance is too explicit to show that the Defendant is not in possession of 30 gunthas of land from the suit property, and that the said circumstance is sufficient to draw an inference that the Defendant is bent upon creating obstructions in the peaceful cultivating possession of the Plaintiff over residue suit property i.e. 76 gunthas. The First Appellate Court, therefore, granted the said Application Exhibit 6, pending the Appeal.

7 Submissions and counter submissions have been made by the learned counsel as regards the merits of the impugned order on Exhibit 6, in my view, much can be said in favour of either sides. However, since the Appeal filed by the Plaintiff against the order of the trial Court is pending, it would not be necessary to deal with the rival contentions, as it is the First Appellate Court which would have to deal with the rival contentions in the said Appeal.

8 In my view, considering the facts and circumstances of the case, it would be just and proper to maintain status quo on site as on date and direct the First Appellate Court to dispose the said Appeal within a particular time frame. The First Appellate Court is therefore directed to hear and decide the said Appeal No. 29 of 2011 within a period of three months from the first appearance of the parties before it. The parties to appear before the First Appellate Court on 28th November 2011. The First Appellate thereafter fixed the schedule of hearing the said Appeal as per its convenience but dispose of the same within the time

stipulated as above. The operative part of the impugned order dated 27/9/2011 is accordingly substituted by the aforesaid directions.

9 Rule is accordingly made absolute in the aforesaid terms with the parties to bear their respective costs.