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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3578 OF 2015

RAFIK AHMED KHUDABAKSHA KHAN AND OTHERS
VERSUS
SAYYAD GULAM @ GULAB AHMED AND OTHERS

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Advocate for Petitioners : Mr.Bhore K.S.

Advocate for Respondents : Mr.Kasliwal A.D. for R/22, 23, 25 and 27.

Mrs.C.S.Deshmukh for R/36 to 40.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 28th July, 2015

Per Court:

1 Heard Shri Bhore, learned Advocate for the Petitioners, Shri A.D.Kasliwal, learned Advocate appearing on behalf of Respondent Nos.22, 23, 25 and 27 and Smt.C.S.Deshmukh, learned Advocate appearing on behalf of Respondent Nos.36 to 40.

2 By an order passed by this Court dated 13.04.2015, all the Respondents have been served through paper publication.

3 The Petitioners are aggrieved by the order passed by the Trial

Court dated 04.05.2013 below Exhibit-5 in RCS No.90/2012 by which the reliefs sought by the Petitioners under Order 39 Rule 1 of the Code of Civil Procedure, have been refused.

4 The Petitioners are also aggrieved by the impugned judgment and order dated 09.03.2015 delivered by the learned District Judge-4 in Miscellaneous Appeal No.96/2013 by which the Appeal has been dismissed.

5 The contention of Shri Bhore is that the Petitioners and their successors are in possession over the suit property from 1952-1953 onwards. He contends that the present Petitioners are settled in possession.

6 Shri Bhore has indicated from the 7/12 extracts, which are placed on record, that the Petitioners are seen to be in possession over the suit property. He submits that the suit preferred by the Petitioners is only for seeking injunction against Respondent Nos.36 to 40 who are the purchasers of the property. No other prayers are put forth in the said suit.

7 He further submits that the Petitioners are cultivating these lands and out of the suit land, a share equal to 5 Ana and 4 Pai Hissa was

acquired by them on the basis of the Will Deed. Their names were recorded in the cultivation column and till 2011 and there has been no objection to the revenue records.

8 He submits that in 2010, some of the Defendants gave an application to the Circle Officer of the Revenue Department praying for entering their names in the cultivation column. The said application was accepted and the Circle Officer, in the submission of the Petitioners, entered the names of the Defendants in the cultivation column without properly conducting an enquiry.

9 He further submits that an appeal was preferred before the Sub-Divisional Officer by the Petitioners/ Plaintiffs and who has directed that the names of the Petitioners be once again entered in the cultivation column. He, therefore, claims possession on the basis of these developments coupled with his earlier possession over the suit property.

10 It is further submitted that Defendant Nos.1 to 35, who are co-owners of the suit property, have executed the registered Sale Deed in favour of Defendant Nos.37 to 41 who are Respondent Nos.36 to 40 in this petition, in respect of the suit land Gat No.774. He submits that the sale deed is illegal and these Defendants will not get a right over the suit

property on the strength of the Sale Deed. He has alleged interference, disturbance and obstruction at the behest of these purchasers/ Defendants and hence, the suit.

11 He assails the impugned orders on the ground that the same suffer from lack of application of mind and are perverse. He has relied upon the judgment of the Apex Court in the case of *Rame Gowda v/s M.Varadappa Naidu* reported in **AIR 2004 SC 4609**. He submits that even by way of assumption, if the Plaintiffs/ Petitioners may not be owners, yet they are entitled to the protection of the Civil Court on account of having settled in possession. He, therefore, submits that the Trial Court should have granted injunction under Order 39 Rule 1 of the Code of Civil Procedure to the Petitioners. The Appeal Court also lost sight of the perversity in the order passed by the Trial Court and hence, both the impugned orders deserve to be quashed and set aside.

12 Shri Kasliwal and Smt.Deshmukh, learned Advocates submit that the entire suit contains vague and ambiguous pleadings. Primarily, the Petitioners could not have preferred the suit against the co-owners especially when it was only aimed at seeking perpetual injunction as a final relief in the suit.

13 By application Exhibit-5, temporary injunction has been sought. The thrust of the Petitioners/ Plaintiffs is that Defendant Nos.37 to 41 cannot be permitted to disturb the possession of the Plaintiffs on the basis of the registered sale deed. It is, therefore, submitted that unless the registered sale deed is challenged, the grievance of the Plaintiffs that the registered sale deed creates no right in favour of the concerned Purchasers/ Defendants, is an unsustainable contention.

14 They further submit that the Trial Court has realized that the suit was in fact in disguise, aimed at ousting the purchasers/ Defendants without questioning the registered sale deed. The relief, however, was sought against all the Defendants. My attention is, therefore, drawn to the cause title of the suit which indicates that it is only for seeking a perpetual injunction. My attention is then drawn to the prayer clauses wherein the relief is sought against all the Defendants, their relatives, friends and agents. Considering the vagueness found in the suit and that the Plaintiffs were seeking injunction even against the co-owners/ Defendant Nos.1 to 35, the Trial Court refused injunction.

15 It is further submitted that the Appeal Court has considered all the contentions of the Plaintiffs and denied the protection sought by them. It is, therefore, submitted that the Plaintiffs are preventing the law

from taking its own course in relation to the registered sale deed, which gave a right to the purchasers/ Defendants to have the sale deed executed, without their challenging the sale deed in the suit.

16 They place reliance upon the judgment of the Apex Court in the matter of *Shanti Budhiya Vesta Patel v/s Nirmala Jayprakash Tiwari* reported in **(2010) All SCR 1921**. It is, therefore, submitted that the Apex Court has concluded that a registered document has legal sanctity and the said sanctity cannot be allowed to be lost without following the due procedure.

17 I have considered the submissions of the learned Advocates as have been recorded herein above. There can be no dispute to the extent of the contention of Shri Bhore, who has placed reliance on Rame Gowda (supra) that an injunction can be granted even to a non owner, if he is in settled possession.

18 The issue raised in the suit is purely of seeking perpetual injunction. Shri Bhore has conceded that no prayer of seeking injunction against the co-owners can be made or can be entertained. He, therefore, submits that even if the prayer clause so indicates, it has to be treated that the Plaintiffs are not seeking an injunction against the co-owners who are

Respondent Nos.1 to 35 herein.

19 The remaining Defendants claim to be in possession since the registered sale deed indicates that the possession is being handed over to them. The registered sale deed cannot be questioned unless and until it is challenged before a competent court by following a due procedure laid down in law.

20 It is beyond comprehension as to what prevented the Plaintiffs from assailing/ questioning the registered sale deed on the basis of which the purchasers/ Defendants have resorted to police protection against the Plaintiffs. It appears, from the suit, prima facie, that the Plaintiffs desire to deprive the purchasers/ Defendants from their rights created through the registered sale deed, without challenging or questioning the said sale deed.

21 In the light of the fact situation as recorded above, ratio laid down by the Apex Court in the case of Shanti Budhiya (supra) squarely applies to the case in hand. The Apex Court has held that the registered sale deed cannot be disregarded or its sanctity cannot be lost unless a proper procedure is followed to take up a cause against such registered document. It is undisputed, in the present case, that the Plaintiffs have not

questioned the registered sale deed on the strength of which the purchasers/ Defendants are claiming rights over the portion of the suit property set out in the sale deed.

22 Section 41 of the Specific Relief Act, 1963 prohibits grant of injunction in certain circumstances. Section 41(h) squarely covers the case of the Defendants, which reads as under:-

“41. *Injunction when refused. – An injunction cannot be granted –*

(a) to (g)

(h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;

(i)

(j) ”

23 The Apex Court in paragraphs 7 and 8 of it's judgment delivered in the matter of *Syed Yakoob v/s K.S. Radhakrishnan* reported in **AIR 1964 SC 477**, has considered the scope of interference of this Court in it's supervisory/ writ jurisdiction, which read as under:-

“7. *The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of*

it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order; or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Art.226 to issue a writ of certiorari can be legitimately exercised (vide *Hari Vishnu Kamath v. Ahmed Ishaque*, 1955-1 SCR 1104: ((S) AIR 1955 SC 233); *Nagendra Nath v. Commissioner of Hills Division*, 1958 SCR 1240 : (AIR 1958 SC 398) and *Kaushalya Devi v.*

Bachittar Singh, AIR 1960 SC 1168.

8. *It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases. the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened."*

24 Similar observations are found in the judgment of the Apex Court in the matter of *Surya Dev Rai v/s Ram Chander Rai* reported in **AIR 2003 SC 3044.**

25 In the light of the above, I do not find that the impugned orders can be said to have caused grave injustice to the Petitioners/ Plaintiffs who seek to oust the purchasers/ Defendants without even questioning the registered sale deed which creates rights in their favour. The impugned orders, therefore, cannot be termed as perverse or erroneous. This Writ Petition is devoid of merit and is, therefore, dismissed.

26 At this stage, Shri Bhore prays for continuance of the protection granted by this Court on 27.04.2015. The learned Advocates for the Respondents/ Defendants have opposed the prayer on the ground that the agricultural season is under way, the Defendants have resorted to agricultural activities and by the status-quo granted by this Court on 27.04.2015, the Petitioners are creating obstruction in the rights of the Defendants.

27 Considering the situation as narrated above and in the light of the fact that agricultural activities are under way, the status-quo granted

by this Court is extended up to 14.08.2015, however, subject to the condition that the Petitioners will not create obstructions to the legal rights of the Defendants.

(RAVINDRA V. GHUGE, J.)