

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4122 OF 2014

Sou. Uma w/o Sunil Shinde

..PETITIONER

VERSUS

Kamalkishor Vithaldas Dhut & ors.

..RESPONDENTS

Mr Dhananjay Deshpande, Advocate for petitioner;
Mr S.M. Vibhute, Advocate for respondent no.1

CORAM : N.W. SAMBRE, J.

DATE : 23rd February, 2015

ORAL ORDER :

The order of dismissal of the Special Civil Suit No.75 of 2008 against defendants no.17 to 20, passed on 22nd April, 2013, below Exh.86, by Joint Civil Judge Senior Division, Osmanabad, in Special Civil Suit No.75 of 2008, is questioned in the present petition.

2. The present petition is by the original plaintiff, who has filed a suit for partition and separate possession. According to the learned Counsel Mr Deshpande, the relevant prayer in the suit, which has not rendered infructuous and could have been gone into on merits by the Trial Court, is prayer clause (C), which reads thus :-

“(C) Sale deed no.2442/2008 dated 10.6.2008 for consideration of Rs.30 lakhs executed by defendant Nos.1, 3 and 4 in favour of defendant Nos.16 to 20 may kindly be declared as null and void ab initio as against the right of the property in the suit property.”

3. According to Mr Deshpande, even if the suit is compromised between the parties, i.e. plaintiff and defendants no.1 to 4 as is reflected in compromise by an order dated 24th August, 2012, the said prayer still subsists. In support of this contention, he has invited attention of this Court to the sale deed which is mentioned in prayer clause (C) quoted supra, to the details of the properties and the boundaries mentioned therein. According to him, the suit ought not to have been dismissed against defendants no.17 to 20, as the property purchased by defendants no.17 to 20 is a different property.

4. One more contention sought to be pressed into service is that the petitioner was not heard as her Lawyer has not brought the filing of the application Exh. 86 to the notice of the plaintiff.

5. Mr Deshpande further submits that the suit in question was dismissed in default, however, Misc. Application No.31 of 2015 is already moved for restoration of the suit.

6. While opposing the above referred submissions, learned Counsel appearing on behalf of the respondent no.1 - defendant no.18, has invited my attention to the fact that defendants no.17 to 20 have stepped into shoes of defendants no.1, 2 and 4. According to him, the learned Trial Court has rightly taken into account the entire factual matrix and has reached to the conclusion that the suit against defendants no.17 to 20 also is not maintainable as the claim made in the suit is already compromised between plaintiff and defendants no.1, 2 and 4.

7. Learned Trial Court, has noted that the lands ad measuring 12 R, 67 R, 91 R and 80 R, which were subject-matter of the suit, are from survey No.139/2, situated at Osmanabad. The Trial Court has taken into account the fact that on 24th August, 2012, the plaintiffs, defendants no.1, 2 and 4 as well as legal representative of deceased defendant no.3 had compromised the suit by filing appropriate purshis to that effect. The Trial Court has also taken note of the fact that along with the said compromise purshis Exh.82, two maps were also annexed. The learned Trial Court has also taken note of the fact that the plaintiff and defendants no.1, 2 and 4 have settled the matter out of Court by filing a compromise purshis. Purshis (Exh.83) was filed by the plaintiff/petitioner stating that she was not interested to proceed against defendants no.5 to 10 and as such, an order to that effect was passed on 24th August, 2012 below Exh.1. The suit, as such, proceeded against defendants no.11 to 20.

8. The learned Trial Court has noted that as per the compromise recorded at Exh.82, defendant no.1 was allotted 35 R land out of survey No.139 of 2012. The said 35 R land has been shown in the rough sketch annexed to Exh.82, which is admitted by the present petitioner/plaintiff. The said 35 R land is at the north-west corner. The Trial Court was alive to the fact that except that 35 R land defendant no.1 was not given any share in other portion of survey no.139/2.

9. The learned Trial Court has taken into account the fact that defendants no.17 to 20 have admitted the sale deed dated 10th June, 2008 and have purchased 32 R land out of above referred 35 R land of defendant no.1 for appropriate consideration.

10. In the said view of the matter, the learned Trial Court, while considering the application Exh.86, having regard to the factual matrix and the compromise recorded at Exh.82, has dismissed the suit against defendants no.17 to 20. The Trial Court has taken into account the fact that the land ad measuring 35 R to the north-west corner had come to the share of defendant no.1 and defendant no.1 has transferred 32 R land out of said property to defendants no.17 to 20 and as the plaintiff has already compromised the claim with defendant no.1 as is reflected in Exh.82, has rightly proceeded to pass an order of dismissal of the suit against

defendants no.17 to 20.

11. The contention of Mr Deshpande, learned Counsel appearing on behalf of the petitioner that the boundaries of the property in question would not match with that of mentioned in the sale deed is concerned, the reference made by the Trial Court to the sketch map annexed to Exh.82 which is admitted by plaintiff justifies the view taken by the Trial Court.

12. It is also required to be noted that the denial of opportunity of hearing is sought to be pressed into service by blaming the Lawyer who appeared for the petitioner before the Trial Court, however, the petitioner has not placed on record any communication entered into between Lawyer to that effect. It is very easy for a party to blame a Lawyer who has represented such party before the Trial Court, since such Lawyer is not a party to the proceedings before this Court, he is not in a position to defend such blame on him. As such, the said contention, in my opinion, does not weigh for interfering. The learned Trial Court has taken a plausible view in the matter.

13. The approach of the petitioner/plaintiff having compromised the suit with defendants no.1, 2 and 4 against whom she had claimed relief of partition and then seeking leave of the Court to proceed against subsequent purchasers - defendants no.17 to 20, who are respondents

before this Court speaks volumes about the very conduct of the petitioner as, perhaps the petitioner intends to twist the arms of the said respondents for an ulterior motive.

14. In that view of the matter, no case for interference is made out. Thus, the writ petition fails and stands rejected with no order as to costs.

(N.W. SAMBRE, J.)

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