

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.490 OF 2015

MOHAMMED NAWAJ MOHAMMED ASHRAF

PETITIONER

VERSUS

AASHISH SHREENIWAS SANWAR

RESPONDENT

Mr.Shaikh Mujtaba Gulam Mustafa, Advocate for the petitioner.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 27/01/2015

PER COURT :

1. Contention of the petitioner is that with the commencement of the trial, the respondent / defendant moved an application for re-casting of issue No.1 and deletion of issue No.3 in RCS No.1740/2012, preferred by the petitioner / plaintiff for injunction simplicitor.

2 The petitioner has examined two witnesses. The first witness has gone unchallenged. The second witness, the petitioner / plaintiff himself is to be subjected to cross-examination. Temporary injunction granted to the petitioner has been sustained upto this Court.

3. It is contended that when issues were cast in 2013, the defendants have filed application Exh.37/D on 07/07/2014 only to delay the matter. Issue No.1 is sought to be recast and issue No.3 is

sought to be deleted. Rival submissions and pleadings have been considered by the Trial Court while framing the issues.

4. After the issues were cast on 21/06/2013, the matter proceeded for recording of evidence. Provisions of the Civil Procedure Code, considered while casting the issues cannot be rendered redundant by amending/recasting the issues. Reliance is placed upon the judgment of the Apex Court in the case of Delhi Airtech Services (P) Ltd., and another Vs. State of Uttar Pradesh and another, 2011 (9) SCC 354 in support of the contention that the law will assist only those who are vigilant and do not sleep over their rights. It is, therefore, prayed that the impugned order, being unsustainable, deserves to be set aside.

5. I have considered the submissions of the learned Advocate for the petitioner and have gone through the petition paper book with his assistance. Issue Nos.1 and 3, which are subject matter of controversy, read as follows :

“(1) Does plaintiff prove that he is owner & possessor of suit property by sale deed 21.11.2011 ?

(3) Does defendant prove that, he is owner and possessor of suit property ?”

6. It is not disputed that the suit is filed only for injunction simplicitor. Foundation of the suit is that the defendant is obstructing the peaceful possession and enjoyment of the suit property of the petitioner.

7. Apparently, issue No.1, as was originally cast, had placed the burden on the petitioner / plaintiff to prove that he is the owner and possessor of the suit property. The suit is not for a declaration as regards the title or ownership of the plaintiff. Injunction is sought in the light of the alleged obstruction caused by the defendant. No doubt, recording of evidence has commenced. Nevertheless, when the suit is not filed for seeking a declaration as regards ownership and title, issue No.1, in my view, has been rightly recast by deleting the word "*owner and*".

8. Issue No.3 indicates to have cast burden on the defendant to prove that he is the owner and possessor of the suit property. Undisputedly, the defendant has not preferred a counter claim and is not seeking a declaration as an owner over the suit property. The petitioner seeks to injunct the defendant from interfering / obstructing his possession in the suit property. In my view, the Trial

Court was not required to deal with the ownership and title of either of the parties in a suit for simplicitor injunction and rightly deleted issue No.3.

9. In the light of the above, the impugned order does not suffer from any infirmity and cannot be termed as perverse or erroneous. The aspect as regards ownership, not being required to be gone into in such a suit, renders the impugned order sustainable.

10. In the light of the above, the petition is devoid of merit and is therefore dismissed.

(RAVINDRA V. GHUGE, J.)