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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3857 OF 2015
ALONG WITH
WRIT PETITION NO.4278 OF 2015

Shri Kiran Maruti Irkar and another .. Petitioners

Vs.

Mr.Vithal Dattu Chavan and others .. Respondents

Mr.G.N.Salunkhe i/b Mr.Hanmant G.Wakshe, Advocate for the Petitioners.

Mr.Abhijeet A.Desai a/w Mr.Rupesh K.Bobade, Advocate for Respondent No.1.

CORAM : R. G. KETKAR, J.

DATE : 09th JULY, 2015

P.C. :

. Heard Mr.G.N.Salunkhe, learned Counsel for the petitioners and Mr. Abhijeet A.Desai, learned Counsel for respondent No.1 in both the Petitions at length.

2. Writ Petition No. 3857 of 2015 is instituted by Kiran Maruti Irkar and Anusaya Maruti Irkar challenging the judgment and order dated 02/03/2015 passed by the learned Joint Civil Judge, Junior Division, Madha below Exhibit 5 in Regular Civil Suit No. 351 of 2014 as also the judgment and order dated 24/03/2015 passed by the learned District Judge-1, Solapur in Civil Misc. Appeal No. 35 of 2015. By these orders, the Courts below have allowed the

application Exhibit 5 for injunction filed by respondent No.1-Vitthal Dattu Chavan.

3. Regular Civil Suit No. 351 of 2014 is instituted by Vitthal Dattu Chavan against defendant No.1-Maruti Anna Irkar, defendant No. 2- Kiran Maruti Irkar, defendant No.3 – Anusaya Maruti Irkar and defendant No.4 – Ankush Vithoba Ghule who is maternal uncle of defendant No.2-Kiran Maruti Irkar.

4. Regular Civil Suit No. 413 of 2014 is instituted by Kiran Maruti Irkar and Anusaya Maruti Irkar against defendant No.1-Vitthal Dattu Chavan, defendant No.2-Pintu Vitthal Kolekar, defendant No.3- Birudev Sawta Kharat and defendant No.4- Maruti Anna Irkar.

5. During the pendency of the Regular Civil Suit No. 351 of 2014, Vitthal Dattu Chavan filed application Exhibit 5 seeking temporary injunction restraining the defendants from causing obstruction to his possession over land bearing Gat No. 69/1E/1 admeasuring 46 R situate at Village Mouze Adhegaon, Taluka – Madha, Solapur (for short 'suit land'). The Courts below have allowed the application. At the same time, Kiran Maruti Irkar and Anusaya Maruti Irkar also filed application Exhibit 5 in their Suit namely Regular Civil Suit No. 413 of 2015. The Courts below have dismissed the application filed by Kiran Maruti Irkar and Anusaya Maruti Irkar. It is against these orders, Writ Petition No. 4278 of

2015 is instituted by Kiran and Anusaya.

6. In support of these petitions, Mr.Salunkhe strenuously contended that on 04/01/2000, Gorakh Machhindra Shinde executed sale deed in respect of suit land and another land which is Gat No.69/1E/2 admeasuring 41 R in favour of Kiran Maruti Irkar through his natural guardian Anusaya Maruti Irkar. The boundaries of the suit land are as under :

East : Gat No. 69/1/C
South : Gat No. 75/1A/1
West : Gat No. 69/1/D
North : Gat No. 69/1E/1A.

7. He submitted that birth date of Kiran is 11/06/1996 as is evident from birth certificate dated 14/03/2015 issued by the Gram Panchayat, Adhegaon, Taluka-Madha. However, Maruti-father of Kiran made application to Talathi and represented that Kiran had attained majority. On that basis, he obtained sale deed from Kiran Irkar on 10/03/2011. In that sale deed, the property was mentioned as Gat No. 59/1E/1 i.e. to say other than the suit land and the boundaries described are as under :

East : Road
South : Gat No. 69/1A/1/1
West : Gat No. 71/1A
North : Gat No. 69/1E/1A

8. He submitted that not only Gat number differs from the suit land even three boundaries are different. Only boundary of northern side in sale deed dated 10/03/2011 matches with the

boundary of the suit land. On 14/06/2011, Maruti, in turn, sold the suit land to Birudev Sawata Kharat. The boundaries described in the sale deed are as under :

East : Road
South : Gat No. 69/1/2 Kiran Maruti Irkar
West : Nivrutti Chopde
North : Gat No. 69/1A Saudagar Chavan

9. He submitted that comparison the boundaries described in the sale deed of 04/01/2000 and 14/06/2011 shows that they are totally different. On 03/01/2012, Birudev Sawata Kharat, in turn, sold the suit land to Pintu Vitthal Kolekar. On 27/06/2013, Pintu Vitthal Kolekar in turn sold the suit land to Vitthal Dattu Chavan.

The boundaries described in the said sale deed are as under :

East : Road
South : Gat No. 69/1/2
West : Nivrutti Chopde
North : Saudagar Chavan

10. He submitted that comparison of boundaries described in the sale deed dated 04/01/2000 and sale deed dated 27/06/2013 shows that except boundary on the eastern side, rest of the boundaries do not match. He, therefore, submitted that Maruti was addicted to vices. Maruti-father of Kiran made application to Talathi and represented that Kiran had attained majority. On that basis, he obtained sale deed from Kiran on 10/03/2011. The property purchased by Maruti on 10/03/2011 is a fake property and not the suit land. On the basis of this transaction, further transactions were

entered into. He submitted that since Kiran Irkar was minor as on 10/03/2011, sale deed obtained by Maruti Irkar is null, void and illegal and not binding on Kiran Irkar. Vitthal Dattu Chavan cannot claim to be in possession of the suit land having regard to the discrepancies in the boundaries as also in view of the fact that sale deed obtained by Maruti is null and void. If the said sale deed obtained by Maruti is null and void, successive transactions can not confer any right, title and interest in favour of Vitthal Dattu Chavan.

11. Mr.Salunkhe submitted that perusal of the birth certificate issued on 19/12/2007 produced by Vitthal bears student register No. 2337. Against the name of student, name of Kiran is mentioned. He has produced school leaving certificate issued by Head Master of the concerned school on 07/04/2015 and against the student's register number 2337, name of his sister Archana is mentioned. In short, he submitted that school leaving certificate dated 19/12/2007 is a fabricated document. In that school leaving certificate date of birth is mentioned as 03/07/1990 which is birth date of his sister Archana and not birth date of Kiran. He submitted that birth certificate issued by Gram Panchayat, Adhegaon records the birth date of Kiran as 11/06/1996 and as on 10/03/2011, he was minor and therefore, the sale deed obtained by Maruti from Kiran is void ab initio. He submitted that on 04/11/2014, Shri Shankar Sahakari Sakhar Karkhana Ltd. (for short 'Karkhana') issued

certificate certifying registration of sugarcane for the season 2014-15 by Kiran and Anusaya in respect of the suit land and other land. The Courts below disbelieved this certificate only on the ground that the suit land admeasures 46 R and the certificate issued is in respect of suit land showing area of 60 R. He, therefore, submitted that the impugned orders deserve to be quashed and set aside, thereby dismissing the application Exhibit 5 filed by Vitthal Dattu Chavan in Regular Civil Suit No. 351 of 2014 and application Exhibit 5 filed by Kiran Irkar and Anusaya Irkar in Regular Civil Suit No. 413 of 2014 deserves to be allowed.

12. On the other hand, Mr.Desai has supported the impugned orders. He submitted that Regular Civil Suit No.351 of 2014 and Regular Civil Suit No. 413 of 2014 were instituted on 13/10/2014 and 10/12/2014 respectively. The certificate produced by Kiran Irkar and Anusaya Irkar is issued by Gram Sevak on 14/03/2015 i.e. to say after institution of the Suits. In that certificate, name of mother of Kiran is shown as Chhaya and not Anusaya. Mr.Salunkhe has countered this submission by submitting that in the voters list, Anusaya's name is shown as Chhaya. Anusaya is also known as Chhaya. Mr.Desai submitted that Bhairavnath Sugar Works issued receipt dated 20/08/2013 mentioning therein that Vitthal had cultivated sugarcane crop in the suit land.

13. I have considered the rival submissions made by the

learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, the Courts below have allowed the injunction application Exhibit 5 filed by Vitthal Dattu Chavan in Regular Civil Suit No.351 of 2014 and dismissed the injunction application Exhibit 5 filed by Kiran Irkar and Anusaya Irkar in Regular Civil Suit No.413 of 2014. Both claim to be in possession of the suit land. The question is whether the Courts below have committed any error while recording prima facie finding as to whether Vitthal Dattu Chavan is in possession.

14. As far as the trial Court is concerned, in paragraph 11, the learned trial Judge has observed that after the sale deed of 10/03/2011, Kiran Irkar and Anusaya Irkar did not produce any 7/12 extract showing their names in the column of cultivation. They have also not adopted proceedings challenging the entry of Vitthal Dattu Chavan in 7/12 extract. They have also not produced any material to indicate that from 2011 to 2014, Vitthal Dattu Chavan was not taking income from the suit land. The certificate dated 04/11/2014 produced by Kiran Irkar and Anusaya Irkar from Karkhana shows that the area of suit land is 60 R as against 46 R. In other words, the learned trial Judge found that there is discrepancy as regards area of the suit land. The learned trial Judge also noted the receipt dated 20/08/2013 produced by Vitthal showing cultivation of sugarcane crop in the suit land. The learned trial

Judge, therefore, held that prima facie, Vitthal Dattu Chavan is in possession of the suit land.

15. As far as the District Court is concerned, in paragraph 12, the learned District Judge observed that as regards the discrepancies in the sale deeds dated 10/03/2011 and 27/06/2013 is concerned, it appears that in some sale deeds, boundaries of entire land i.e. suit land as also land bearing Gat No. 69/1E/2 are mentioned. Whether the boundaries mentioned in the sale deeds are correct or not can also be proved after evidence of parties that will be recorded during the course of trial. In paragraph 14, the learned District Judge dealt with the certificate issued by Kiran Irkar and Anusaya Irkar from Shri Shankar Sahakari Sakhar Karkhana Ltd. In paragraph 16, the learned District Judge has observed that registered sale deed in favour of Vitthal Chavan and the mutation entry as well as entry in 7x12 extract, prima facie, show that he is owner and in possession of the suit land. As against this, Kiran Irkar and Anusaya Irkar did not produce any document to show that at the time of filing of the suit, they are in possession of the suit land. The learned District Judge, therefore, prima facie, held that Vitthal Dattu Chavan is the owner as well as in possession of the suit land. As far as the birth certificate produced by Vitthal on one hand and birth certificate produced by Kiran and Anusaya are concerned, the fact remains that certificate produced by Kiran and Anusaya was issued on

14/03/2015 i.e. to say after institution of the Suits.

16. After considering the submissions advanced by the learned Counsel appearing for the parties as also after considering the material on record, I do not find that the Courts below committed any error in passing the impugned orders. In the case of *Wander Limited and another Vs. Antox India Private Limited, 1990 (Supp.) SCC 727*, the Apex Court in paragraph 14 has observed as under:

“....., the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. The Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in *Printers (Mysore) Private Limited Vs. Pothan Joseph, (1960) 3 SCR 713, (SCR 721)*

“....These principles are well established, but as has been observed by Viscount Simon in *Charles Oseinton & Co. V. Jhanton, 1942 AC 130'* ... the law as to the reversal by a court of appeal of an order made by a Judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case'.”

17. Applying the above test to the present case, I do not find that the Courts below committed any error while exercising the discretion in granting injunction in favour of Vitthal Dattu Chavan and refusing injunction in favour of Kiran Irkar and Anusaya Irkar. Hence, Petitions fail and the same are dismissed. Liberty is reserved to Kiran Irkar and Anusaya Irkar to apply for expeditious disposal of the Suit. If such application is made, the learned trial Judge will pass appropriate order in accordance with law and on the basis of the material on record. Order accordingly.

(R. G. KETKAR, J.)