

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.120 OF 2015

Bhika Dagadu Kadu : Petitioner
versus
Ashok Sahebroa Kale : Respondent.

Mr. Rahul S Kadam for the Petitioner.

CORAM : R. M. SAVANT, J.
DATE : 12th January 2015

P.C.

1 The order dated 31/10/2014 passed by the learned Ad-hoc District Judge-2, Baramati allowing the Misc. Civil Appeal No.15 of 2012 which has been filed by the Respondent herein and thereby setting aside the order dated 19/01/2012 passed on the Application (Exhibit 5) in Regular Civil Suit No.331 of 2011 is taken exception to by way of the above Petition.

2 The suit in question has been filed by the Respondent original Plaintiff for specific performance of the Agreement and for injunction. The specific performance is sought in respect of the Agreement of Sale of a plot of land which was agreed to be sold to him by the Petitioner original Defendant. The said plot was allotted to the Defendant as and by way of rehabilitation under the Maharashtra Project Affected Persons Rehabilitation Act. The suit of the Plaintiff is founded on the Agreement of Sale dated 16/12/2000 executed

by the Defendant i.e. the Petitioner herein for the sale of the said plot of land for a consideration of Rs.55,000/-. The said Agreement of Sale has been registered and bears registration No.2282/2000. It is the case of the Plaintiff that on the date of the Agreement the Plaintiff has paid an amount of Rs.30,000/- as an earnest amount to the Defendant and it was agreed between the parties that the remaining amount shall be paid at the time of registration of the Sale Deed. It was agreed between the parties that considering the class of land, which belongs to the new tenure, the Defendant was to obtain the permission from the Government for execution of the Sale Deed. It appears that the Defendant i.e. the Petitioner herein being in need of money accepted the further amount of Rs.25,000/- from the Plaintiff and executed another Agreement which was notarized on 19/3/2001. By the said Agreement also the Defendant has agreed to bring the permission from the Government for the execution of the Sale Deed. In terms of the said notarized Agreement and the recitals contained therein the Defendant has handed over the possession of the suit property to the Plaintiff. On the apprehension that the Defendant would create third party rights in respect of the plot of land which was agreed to be sold to the Plaintiff, that the Plaintiff had filed the Application (Exhibit 5) for temporary injunction in the suit. In the context of the present Petition, it is required to be noted that in Paragraph 5 of the Application it has been mentioned that pursuant to the Agreement dated 19/3/2001 i.e. the 2nd Agreement, the Plaintiff is put in possession and continues to be in possession

till this date. However, by the said Application, an injunction is sought restraining the Defendant from creating third party rights in respect of the plot of land which has been agreed to be sold to the Plaintiff by the Defendant.

3 The said Application (Exhibit 5) was contested by the Defendant by filing his reply and various contentions were raised in the said reply questioning the execution of the Agreements.

4 The Trial Court considered the said Application (Exhibit 5) and as indicated above by its order dated 19/1/2012 has rejected the said Application (Exhibit 5). The gist of the reasoning of the Trial Court was that in the 7x12 extract the name of the Defendant is appearing and that the Plaintiff has kept mum for over a decade though the Agreements have been executed in the year 2000 and 2001 and that the apprehension of the Plaintiff that the Defendant would create third party rights was mis-founded. The Trial Court observed that there is nothing on record to show that the Defendant has entered into any Agreement to Sale or issued any notice to sell the suit property. The Trial Court was of the view that the Agreement executed by the Defendant without permission of the competent authority was illegal and therefore no relief could be granted to the Plaintiff and has accordingly by its order dated 19/1/2012 rejected the said Application (Exhibit 5).

5 The Plaintiff aggrieved by the said order carried the matter in Appeal by filing Misc. Civil Appeal No.15 of 2012. The Lower Appellate Court re-appreciated the material on record. The Lower Appellate Court adverted to the first Agreement dated 16/12/2000 pursuant to which the Defendant had accepted a sum of Rs.30,000/- and also adverted to the 2nd Agreement dated 19/3/2001 pursuant to which the Defendant had accepted a sum of Rs.25,000/-. The Lower Appellate Court also adverted to the recitals in the said two Agreements. The recitals in the Agreement dated 16/12/2000 being to the effect that the Defendant would bring the permission from the Government for execution of the Sale Deed and the recitals in the Agreement dated 19/3/2001 being to the effect that the Defendant has delivered the possession of the plot of land to the Plaintiff. The Lower Appellate Court was of the view that the Trial Court had erred in rejecting the application on the ground that the Plaintiff is not entitled to the said discretionary relief as the said Agreements were contrary to law. The Lower Appellate Court was of the view that the Trial Court had failed to appreciate that it is the Defendant who had agreed to obtain the permission from the Government and once the Defendant having accepted so, it was the duty of the Defendant to bring the said permission from the Government. The Lower Appellate Court was of the view that even in the second Agreement dated 19/3/2001 the Defendant has agreed to bring the permission from the Government and thereafter execute the Sale Deed within two months. There is a recital also in the second

Agreement to the effect that the Defendant has handed over the possession of the plot of land to the Plaintiff. The Lower Appellate Court was of the view that the Trial Court has failed to appreciate the facts in their proper perspective and therefore has passed an erroneous order rejecting the Application (Exhibit 5). The Lower Appellate Court therefore deemed it appropriate to allow the Appeal and thereby allowed the Application (Exhibit 5) and thereby restrained the Defendants from alienating the suit property as well as interfering and obstructing the possession of the Plaintiff over the suit property till the decision of the suit in question.

6 The learned counsel appearing for the Petitioner Shri Kadam would contend that before the Trial Court the injunction application was restricted to the Defendants being restrained from creating third party rights, however, the Lower Appellate Court has erred in expanding the scope of the Application thereby protecting the possession of the Plaintiff. The learned counsel for the Petitioner sought to place reliance on the written statement filed by the Plaintiff herein who was the Defendant No.3 in the suit filed by the original owner being Regular Civil Suit No.111 of 2001 and would contend that the fact that the Defendant in the instant case is in possession is borne out by the said written statement.

7 In my view, it is not possible to accept the said contentions of the

learned counsel for the Petitioner. In so far as the first contention is concerned, as indicated above, in paragraph 5 of the Application for temporary injunction, it is the case of the Plaintiff that he was put in possession pursuant to the 2nd Agreement dated 19/3/2001. The Lower Appellate Court was therefore within its rights to protect the possession of the Plaintiff.

In so far as the 2nd contention is concerned, it is significant to note that the present Defendant i.e. the Petitioner herein was the Defendant No.2 in the said Regular Civil Suit No.111 of 2001, and the present Plaintiff i.e. the Respondent herein was the Defendant No.3 in the said Suit. The Defendant No.2 i.e. the present Defendant/Petitioner had executed a power of attorney in favour of the Defendant No.3 i.e. present Plaintiff/Respondent and it is the present Plaintiff/Respondent i.e. the Defendant No.3 in the said suit who had filed the written statement for both the Defendants stating therein that the Defendant No.2 i.e. the Petitioner herein was allotted the plot of land as and by way of rehabilitation under the Maharashtra Project Affected Persons Rehabilitation Act, that the Defendant No.2 had executed the Sale Deed in favour of the Defendant No.3 i.e. the Respondent herein, and thereafter had also executed further Agreement dated 19/3/2001 in favour of the Defendant No.3 i.e. the Respondent herein. It has further been stated that it is pursuant to the power of attorney that the present Plaintiff i.e. the Respondent herein is cultivating the said land meaning thereby that he is in possession. In my view,

the averments made in the said written statement filed in Regular Civil Suit No.111 of 2001 can hardly aid the Petitioner herein that it is the Defendant in the present suit to contend that he is in possession. It is also required to be noted that the Defendant No.2 in the said suit had not file his independent written statement but had vested the said power in the Defendant No.3 i.e. the present Plaintiff to file the written statement. The said fact would obviously have to be connected with the fact that the Defendant in the present case has already executed two Agreements in favour of the Plaintiff. There can be no other explanation for the Defendant No.2 in the said suit i.e. the present Defendant permitting the Defendant No.3 in the said Suit i.e. the present Plaintiff to file the said joint written statement.

8 Having heard the learned counsel for the Petitioner and having perused the orders passed by the Courts below, no case for interference in the written jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]