

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

WRIT PETITION NO.1159 OF 2015

Navin Madhukar Mahajan : Petitioner.
Versus
Smt. Vijaya Tukaram More and ors. : Respondents.

Mr. Shekhar Jagtap i/by J Shekhar and Co. for the Petitioner.

CORAM : R. M. SAVANT, J.
DATE : 10th February 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 17/12/2014 passed by the learned 2nd Joint Civil Judge, Senior Division, Kolhapur by which order the Misc. Civil Application 72 of 2011 (Exhibit 48/B) filed by the Plaintiffs invoking Order XXXIX Rule 2A of the Code of Civil Procedure came to be allowed and the directions which are contained in the operative part of the impugned order from Clauses 2 to 8 came to be issued.

2 The suit in question being Special Civil Suit No.323 of 2007 is filed for temporary injunction in respect of the suit property being City Survey No.33-B admeasuring 7 Hectors 69 Ares. In the said suit the application for temporary injunction filed by the Plaintiffs came to be allowed by the Trial Court on 31/12/2008. By the said injunction granted, the Defendants were

restrained from selling the suit property, changing the rights in respect of the suit property or mortgaging the suit property. After the said injunction order came to be passed, the Opponent Nos.1 to 3, i.e. the Defendants to the suit, executed a sale deed dated 7/3/2009 for some part of the suit property for a consideration of Rs.4,55,000/- in favour of the Petitioner herein who was the Opponent No.5 in so far as the instant application is concerned. It seems that the said transaction was endorsed by the Opponent No.4 who is an Advocate of the Opponent Nos.1 to 3 in the Trial Court. It appears that along with the Opponent Nos.1 to 3, the Opponent No.4 i.e. the Advocate also signed the said document. In view of the execution of the said document in favour of the Opponent No.5, the Plaintiffs filed the instant Application (Exhibit 48-B) invoking Order XXXIX Rule 2A of the Code of the Civil Procedure. It was the case of the Plaintiffs that the said transaction has been entered into by the Opponent Nos.1 to 3 in a blatant and flagrant violation of the order of injunction. The Opponent Nos.1 to 3 i.e. the Defendants to the suit sought to take a defence that they were not aware of the order of injunction passed in the said suit. In so far as the Opponent No.5 i.e. the purchaser is concerned, he took a defence that he is a bonafide purchaser and that he was not aware of the litigation as well as the order passed in the suit.

3 The Trial Court whilst adjudicating upon the instant Application (Exhibit 44-B) rejected the said defence which has been taken by the Opponent

Nos.1 to 3 and the Opponent No.5 i.e. the Purchaser. In so far as the Opponent Nos.1 to 3 are concerned, the Trial Court held that the case of the said Opponent that they were not aware of the order of injunction cannot be countenanced as a party to the proceedings is expected to know the developments in the proceedings as also the orders passed in the said proceedings. In so far as the Opponent No.5 is concerned, the Trial Court observed that the Opponent No.5 was not aware of the proceedings or the order passed therein, however, he being the beneficiary of the action of the Opponent Nos.1 to 3, which action is in blatant and flagrant violation of the order of injunction the Sale Deed executed in his favour is vitiated on the said ground. The Trial Court accordingly allowed the Application (Exhibit 48-B) and has issued the directions which as indicated above are contained in Clauses 2 to 8 of the operative part of the impugned order. In so far as the Opponent No.5 i.e. the Petitioner herein is concerned, Clauses 2 to 5 are material. In so far as Clause 2 is concerned, the Trial Court has directed attachment of the property mentioned in the sale deed (Exhibit 47). By Clause 3 the Trial Court has directed that the Opponent No.5 should not sell the property any third party or create any charge on the property. By Clause 4 the Trial Court directed to display the attachment order on the property concerned, the Grampanchayat, the Tahsil Office as well as on the notice board of the Court. The Trial Court has directed the impugned order be sent to the Tahsildar for recording the same in the 7x12 extract. The Petitioner herein who is the

Opponent No.5 being aggrieved by the impugned order has filed the above Petition.

4 The learned counsel for the Petitioner sought to reiterate the case of the Petitioner which was urged before the Trial Court viz. that the Petitioner i.e. the Opponent No.5 is the bonafide purchaser from the Opponent Nos.1 to 3.

5 In my view, it is not possible to show any indulgence to the Petitioner i.e. the Opponent No.5 in respect of the transaction which has been entered into by the Petitioner with the Opponent Nos. 1 to 3. As indicated above the Opponent Nos. 1 to 3 are the parties to the suit being the Defendants. The Opponent Nos.1 to 3 are represented in the suit and have appeared through their advocate i.e. the Opponent No.4. The Trial Court was therefore right in rejecting the defence of the Opponent Nos.1 to 3 that they were not aware of the order of injunction passed in the suit. The Opponent No.5 i.e. the Petitioner herein being the beneficiary from the Opponent Nos.1 to 3 is concerned, no indulgence can be shown to the Opponent No.5 on the ground that he is the bonafide purchaser as the transaction itself has been entered into in blatant and flagrant violation of the order of injunction. The directions relating to attachment etc which are contained in Clauses 2 to 5 of the impugned order were therefore required to be issued to avoid further

complications. Hence no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]