

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.804 OF 2015
with
CAF/969/2015

Subhash Sheti Pawar ... Appellant

Vs.

Sou.Minakshi Ravindra Zadbuke & ors. ... Respondents

Mr.Ajay A. Joshi a/w S.P. Rajepandhare for the Appellant
Mr.A.M. Shete for Respondent Nos.1 to 4
Mr.Anant Vadgaonkar for Resp. No.5

CORAM: **MRS.MRIDULA BHATKAR, J.**
ORDER RESERVED 2nd ON: **8th OCTOBER, 2015**
ORDER PRONOUNCED ON: **2nd DECEMBER, 2015**

P.C.:

1. Rule. By consent of the parties, Rule made returnable forthwith and heard finally at the stage of admission.
2. This appeal is directed against the order dated 13.11.2014 passed by the District Judge 1, Pandharpur, thereby allowing the application for temporary injunction, exhibit 5, in Regular Civil Appeal No.119 of 2013. By the said order, the respondents therein, i.e., the present appellant and his agents and family members are restrained by order of the temporary injunction from interfering and causing any act of obstruction in the possession and enjoyment of the respondents over the agricultural land i.e., the suit land at Mauje Magarwadi, Taluka Pandharpur, District Solapur, till decision of the Regular Civil Appeal No.119 of 2013.

3. The appellant is the original defendant No.3. The respondents are the plaintiffs. Plaintiff No.1 Minkashi is the wife of original defendant Ravindra Baburao Zadbuke. Plaintiff Nos.2, 3 and 4 are the children of Ravindra, who are taking education. They filed a suit for cancellation of the following sale deeds and declaration as not binding on the plaintiffs:

- i) Sale deed dated 6.6.2000 which was executed by defendant No.1, the husband of plaintiff No.1 with defendant No.2 of the suit land;
- ii) The sale deed of 15.5.2000 of a shop executed between Defendant No.1 and defendant No.3 in respect of shop;
- iii) Sale deed dated 24.10.2000 between defendant Nos.1 and 4 of a shop.
- iv) Sale deed dated 13.11.2000 between defendant Nos.1, defendant Nos.5 and 6 in respect of a shop.

4. It is the case of the plaintiffs that the entire suit property is an ancestral property of the family so the plaintiffs have right in the suit property. Defendant No.1 was addicted to liquor, gambling and was irresponsible and extravagant. Thereafter, he sold his properties to meet his requirements and pay off the loans, taken from various people. The respondents, i.e., the present appellants, appeared in the suit and it was submitted that this defendant No.1 has sold off the properties to different

persons i.e., defendant Nos.2 to 6. Thus, the plaintiffs have no right in the suit property. The defendant No.1 has suffered losses in the business. So he had to obtain loan from the bank and other persons. He had to spend money on the treatment of his father and therefore he sold his property. It is contended that plaintiff No.1 was fully aware of these transactions and has consented for the same and, therefore, the plaintiffs' demand is hit by estoppel by conduct.

5. Regular Civil Suit No.8 of 2012 (old No. 421 of 2002) was dismissed on 25th April, 2013 by Civil Judge, Senior Division against which the plaintiffs/present respondent Nos. 1 to 4 filed Regular Civil Appeal No.119 of 2013 and in that Civil Appeal, respondent Nos.1 to 4 moved Application below Exhibit 5 for injunction and it was allowed by the order dated 13.11.2014 against which this Appeal is filed.

6. Miscellaneous Civil Appeal No.1 of 2012 was filed by the present appellant/original defendant No.3 against the order of Civil Judge, Senior Division dated 21st December, 2011 rejecting his application for injunction against the plaintiffs that they should not cause obstruction to peaceful possession. The learned District Judge by his order dated 22nd April, 2013 in appeal set aside the order of learned Civil Judge Senior Division and allowed the Appeal and granted temporary injunction restraining the plaintiffs from obstructing the peaceful possession of defendant no. 3 over

the suit property till disposal of the suit. So that order of injunction dated 22nd April, 2013 was in force till 25th April, 2013, i.e., virtually for 2 to 3 days, as the suit was dismissed after three days i.e., on 25th April, 2013. Thus, that order merged in the final decree.

7. Both the parties tendered documentary and oral evidence. The learned Judge after considering the evidence tendered before the Court so also considering the submissions of the parties, dismissed the suit against which the plaintiffs filed Regular Civil Appeal No.119 of 2013. In the said appeal, the appellants filed application under Order 39 Rule 2 of the CPC against Respondent No.3 for temporary injunction restraining him from obstructing in possession and enjoyment of the appellant over the agricultural land. The learned District Judge granted temporary injunction against the suit land at Magarwadi. Hence, this appeal.

8. Mr.Joshi, the learned Counsel for the appellant, has submitted that pending the suit, there was no order of injunction in favour of the respondents at any time. The respondents/original plaintiffs have filed the suit for cancellation of the sale deeds and also prayed for their 1/5th share each in the suit property. The issue of possession was framed in the suit and it is held negative. Under such circumstances, the learned District Judge ought not to have granted injunction against the present appellant, who is already in possession of the suit land. He further argued that the

learned District Judge has committed error in relying on the documents which were not exhibited before the trial Court. Exhibit 20, which is a list of documents was rejected by the trial Court. The original plaintiffs could not prove their possession before the trial Court and the present appellant is in fact in possession of the land pursuant to the agreement dated 22.1.2002, since 2002 and handed over possession to him on the same day. He further submitted that the present appellant Subhash Pawar has earlier filed a Miscellaneous Civil Appeal No.1 of 2012 against the order dated 21.12.2011 by which the Civil Judge, Senior Division, Pandharpur below exhibit 68 has rejected the application for temporary injunction filed by the present appellant i.e., the defendant in RCS No.8 of 2012 (old Special Suit No.421 of 2002).

9. Mr.Joshi submitted that in Miscellaneous Appeal No.1 of 2012, his application for temporary injunction was rejected by order dated 21.12.2011 by CJSD, Pandharpur, in the suit which was filed for partition and separate possession by Minakshi i.e., the original plaintiff in respect of the land at village Magarwadi. The said suit property was sold by the defendant/husband for consideration to defendant No.2 and then defendant No.2 sold the property to defendant No.3 i.e., Subhash Sheti Pawar by sale deed dated 22.1.2002. Therefore, defendant No.3 is in possession of the suit property and he is cultivating the land and defendant No.1 thereafter filed this application for temporary injunction in

the said suit of 66 of 2003. The District Judge allowed the said appeal and held that defendant No.3 is in possession of the suit property by sale deed dated 22.1.2002 which he had received from defendant No.2 in that suit. He further submitted that the documents which are produced by the respondents i.e., the original plaintiffs are prior to 2002 and on the basis of those documents, the plaintiffs cannot prove their possession of the suit property. On the other hand, the appellant has 7/12 extract wherein the suit land stands in his name from 2002. He has been paying the land revenue for the suit land and is having receipts for the same. Under such circumstances, the order passed by the District Judge, is illegal. In support of his submissions, he relied on the judgment in the case of **Sudhakar Mukherjee vs. Gofur Sheikh & Ors.**¹. The learned Counsel also relied on the judgment in the case of **Mohammed Ibrahim Khan vs. Pateshwari Prasad Singh**².

10. Mr.Shete, appearing for Respondent Nos.1 to 4 were / original plaintiffs submitted that the plaintiffs are in possession of the suit land and therefore possession of the suit land was not demanded in the suit by the plaintiffs. It was a suit only for a declaration and injunction. He submitted that the fact that the original defendant No.1 i.e., the husband of the original plaintiff has sold the land to defendant No.2 for Rs.4,63,000/- on 6.6.2000 and thereafter the original defendant No.2 sold the same land to

1 AIR 1959 CALCUTTA 386 (Vol. 46 C-106)

2 AIR 1960 Allahabad 252 (Lucknow Bench)

defendant No.3 i.e., the present appellant after 1½ years thereafter on 22.1.2002 for substantially lesser amount, i.e., Rs.15,000/-. This itself shows that the entire transaction was bogus and the possession of the land was never parted with by the present respondents. He submitted that the plaintiffs have produced electricity bills of the motor which is filed in the suit land. It is these bills which are paid by the original plaintiffs from time to time so also the sugarcane crop was sent to sugar factory by the plaintiffs. This shows that she is in continuous possession of the suit premises. This is ancestral land of the original plaintiffs and there was no injunction in favour of defendant No.3 except for four days and therefore, the order passed by the learned District Judge is legal so that the possession of the original plaintiff is hereby protected.

11. In the case of **Mohammad Ibrahim Khan vs. Pateshwari Prasad Singh**³, the Appellant i.e., the Plaintiff had filed the suit seeking injunction that the Defendant be restrained from selling the plots. During the pendency of the suit, the appellate Court had allowed the Respondent to sell the plots on depositing an amount of Rs.90,000/- towards security. However, subsequently the suit was dismissed and the present Appeal was filed. On 27th February, 1956, the Respondent sold the plots to third party by registered sale deed. Thereafter, the application was moved before the Appellate Court that the party failed to deposit the sum of

3 AIR 1960 ALLAHABAD 252

Rs.90,000/- and, therefore, it is to be suitably dealt with.

12. In the same matter, the Division Bench of Allahabad High Court held that after the dismissal of the suit, no ad-interim injunction under Order 39 Rule 1 of Code of Civil Procedure could be passed. The facts of the said case were different as the amount of Rs.90,000/- which was directed to be deposited, was not deposited and as it was outright sale of suit land after the dismissal of the suit. In the case in hand, the suit was for the partition and also for declaration.

13. In the application for injunction, the fact of possession is very important. It is necessary for the party who prays for injunction against the other, has to prove his possession. In the present matter, it is true that the suit is not filed for possession by the plaintiffs i.e., the respondents. The suit was for declaration as to whether the sale deeds were executed out of legal necessity and whether such sale deeds were binding on the plaintiffs. However, while framing issues in the suit, the trial Court framed issue No.1 (a) as whether the plaintiffs prove possession over the suit property and a negative finding was given by the trial Court while answering the said issue. At the time of arriving at the conclusion, the trial Court has considered evidence tendered before it as the suit was decided finally. The original plaintiffs i.e., the respondents had produced bills of electricity connection and payment of the electricity which still stands in the name of

the plaintiffs, against which the defendants have produced a permission sought from the Talathi for digging borewell in the suit property. Both the parties have claimed that they are sending the crop of sugarcane to sugar factories. The agreement of sale of the land was executed between defendant No.1, who is the husband of the plaintiff No.1 on 6.6.2000 for Rs.4 lacs and 1½ years thereafter defendant No.2 sold the land in favour of defendant No.3 on 22.1.2002 for Rs.1,40,000/-. The observation of the learned District Judge that the value of the land will not reduce from Rs.4 lacs to Rs.1,40,000/-. On the basis of these sale deeds, mutation entries are carried out in the revenue record. However, still, it cannot be said exclusively that possession of the land was handed over to the defendants. It is to be noted that during the pendency of the suit, though the plaintiffs filed the application for injunction against the defendants, the said application was not pressed. The reason for doing so can be in favour of both the parties. For the plaintiffs, it was not pressed because there was no apprehension from the respondents to the possession of the plaintiffs for a long time and so the application was not pressed. The defendants have taken a stand that the plaintiffs did not press the application for possession because they were in fact not in possession and they were not sure about the merit of their application. However, defendant No.3, the present appellant has filed the application at exhibit 68 that the plaintiffs should not obstruct his peaceful possession of the

land and should not damage his sugarcane crop. The said application of defendant No.3 was rejected by the trial Court by order dated 21.12.2011 against which the miscellaneous appeal was filed bearing No.1 of 2012 and the said appeal was allowed. Thus, the learned District Judge has accepted that defendant No.3 was in possession of the suit property and the plaintiffs were restrained from causing obstruction to the peaceful possession of defendant No.3 till the decision of the suit and the order of the trial Court was set aside by order dated 22.4.2013. However, the suit was dismissed on 25.4.2013, i.e., three days after the said order was passed. It appears from the documents, it is not possible to decide either plaintiffs or defendant No.3. Are in possession of the suit property. It is pointed out that the plaintiffs i.e., the respondents in the present appeal have filed application under Order 41 Rule 27 for production of the applications which are marked exhibits 20, 26 and 34. The said application was allowed on 20.6.2014 and 16.8.2014. The said orders were challenged in the Writ Petition (stamp) No.22887 of 2014 by order dated 8.1.2015. In the said petition, the stay was granted to the order of the appeal Court by the learned Single Judge of this Court in the Writ Petition by order dated 3.9.2014. However, the order which is under challenge of granting injunction in favour of the respondents, the original plaintiffs, was passed on 13.11.2014 by the District Judge, Pandharpur. At the time of the said order, though the Court has considered the documents

which were filed before the trial Court it has also taken into account the documents which were filed at exhibit 20, the production of which was under challenge and was stayed by the order of the High Court in the writ petition. It appears that those documents ought not to have been considered by the District Judge at that time. The learned Single Judge of this Court while allowing the writ petition by its order dated 8.1.2015 though set aside the order of the District Court, it directed the District Court to consider those applications filed under Order 41 Rule 27 at the time of final arguments. Thus, it can be said that the production of the additional documentary evidence is postponed by the order of the High Court which may be allowed by the District Judge at the time of final arguments. Considering all these aspects and prima facie balancing evidence, I am of the view that at this stage, it is difficult to ascertain who is in actual physical possession of the suit lands. The parties are required to produce documentary evidence, if available for adjudication of the issue.

14. Under such circumstances, I vacate the order passed by the learned District Judge dated 13.11.2014. However, I direct the parties to maintain status quo as on today and the learned District Judge may proceed with the appeal and endeavour to expedite it within nine months from the date of receipt of the order.

15. Appeal is disposed of accordingly.

16. In view of the disposal of the Appeal, Civil Application stands disposed of accordingly.

(MRIDULA BHATKAR, J.)