

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3171 OF 2013

WITH

APPEAL FROM ORDER (STAMP) NO.6049 OF 2014

Shri. Ramnath Bansilal Golecha .. Petitioner

Versus

Smt. Chandradevi Laxmanrao Bhosale and others .. Respondents

Mr. P N. Joshi, for the Petitioner.

Mr. P B. Bhargude, for the Respondent No.1 to 6 and 10 to 16.

Mr. M. J. Jamdar a/w Mr. Rohan Surve, for the Respondent No.17.

WITH

CIVIL APPLICATION NO.1531 OF 2013

IN

WRIT PETITION NO.3171 OF 2013

Phule Ambedkar Magasvargiya Co-op.

Housing Society .. Applicant

IN THE MATTER BETWEEN

Shri. Ramnath Bansilal Golecha .. Petitioner

Versus

Smt. Chandradevi Laxmanrao Bhosale and others .. Respondents

None for the Applicant.

Mr. P N. Joshi, for the Respondent.

CORAM : R.M. SAVANT, J.

DATE : 13th OCTOBER, 2015

PC.

1. The above Appeal from Order arises out of the rejection of the

application filed under Order 39 Rule 11 of the Civil Procedure Code i.e. for striking of the defence of the Defendants on the ground that they have committed breach and violation of the order of injunction dated 19.12.2009. In so far as the above Writ Petition is concerned, the said Writ Petition challenges the order rejecting the application filed by the Petitioner that the Defendants should be directed to give their individual affidavits that they have not created third party rights after the order of injunction came to be passed and that the sole affidavit filed by the Defendant No.13 would not suffice. In so far as the Appeal from Order is concerned, the Trial Court by accepting the explanation given by the Defendants that they have not created any third party rights after the order of injunction came to be passed as also on the ground of the affidavit filed by the Defendant No.13 to the said effect, as also on the ground that the documents have not been registered and therefore the third parties in whose favour the documents are executed do not get a right under the said documents, rejected the said application filed under Order XXXIX Rule 11. During the course of the hearing of the above proceedings i.e. Writ Petition and the Appeal from Order, the Learned Counsel appearing on behalf of the Defendants Mr. P. B. Bhargude had sought time to take instructions as regards the filing of the affidavit-cum-undertaking of the Defendants that they have not created any third party

rights after the order of injunction came to be passed and that they would not create third party rights during the pendency of the suit. Upon this, the learned Counsel appearing for the Petitioner in the Writ Petition and the Appellant in the Appeal from Order Mr. P. N. Joshi submitted that if such an affidavit-cum-undertaking is filed the same would suffice the purpose of the Petitioner and the Appellant and that if such affidavit-cum-undertaking is filed, appropriate orders can be passed by this Court disposing of the above two proceedings. The Learned Counsel appearing for the Respondent Nos.1 to 6 and 10 to 16 Mr. P. B. Bhargude accordingly tenders the affidavit-cum-undertaking filed on behalf of the Defendant Nos.1 to 6 and 10 to 16 by the Respondent No.2 Shri. Ramesh Bhosale in which affidavit-cum-undertaking it is stated in paragraph 3 that the Defendants have not created any third party interests after the injunction order came to be passed and would also not create any third party interests in respect of the suit property till the disposal of the suit. The said affidavit-cum-undertaking dated 13.10.2015 has been filed by the Respondent No.2 on the basis of the Power of Attorney executed in his favour by the other Respondents in the above Petition who are also parties in the Appeal from Order. The Respondent No.9 in the above Petition has filed her own affidavit-cum-undertaking, wherein in paragraph 3 she has stated on the same lines as the Respondent No.2 in his affidavit dated

13.10.2015. In so far as the Respondent No.7 is concerned, she is a co-owner with the other Respondents and that being so, it is expected that she would not be able to deal with the suit property in any manner without the aid and assistance of the other Respondents. Hence, there is no necessity to delay the disposal of the above matter on account of the non-filing of the affidavit-cum-undertaking by the Respondent No.7. The Learned Counsel appearing for the Petitioner and the Appellant in the Appeal from Order Mr. P. N. Joshi is satisfied by the undertakings filed as above. The Respondent No.2 - Shri. Ramesh Keshavrao Bhosale, Respondent No.9 - Smt. Lata Pradip Jadhav, Respondent No.11 - Smt. Seema Girish Magar, Respondent No.12 - Smt. Anupama Ranjit Ingale, Respondent No.13 - Shri. Satyendra Balasaheb Bhosale, Respondent No.15 - Smt. Sarita Mahendra Bhosale are personally present in Court and identified by Learned Advocate Mr. P. B. Bhargude. In view of the undertakings, there is now no warrant to keep the Petitions pending. The orders passed by the Trial Court rejecting the application under Order 39 Rule 11 and also the application for individual affidavits to be filed being transcended by the aforesaid fact of the undertakings being filed on behalf of the Respondents to the above Petition, the above Petition as well as the Appeal from Order to accordingly stand disposed of.

2. In so far as the aspect of possession of the suit property is

concerned, the affidavit-cum-undertakings are filed on the basis that the Defendants are in possession which fact is sought to be disputed by the Petitioner as well as the Respondent No.17 who is represented by Mr. M. J. Jamdar. In my view, it is not necessary for this Court to enter into the said arena. Hence, this Court does not express any opinion either way and it is for the parties to agitate the same before the Trial Court. In so far as the Respondent No.17 is concerned, in so far as the present proceedings i.e. above Writ Petition and the Appeal from Order, there is no lis between the Respondent No.17, as also the intervener who has filed Civil Application No.1531 of 2013 and the other Respondents represented by Mr. P. B. Bhargude. It is for them to agitate their grievance at the appropriate stage in the suit. This Court also does not express any opinion as regards their claim. The affidavit-cum-undertakings are taken on record and marked as "X" and "Y" for identification as also the Power of Attorney executed in favour of the said Shri. Ramesh Bhosale is taken on record and marked as "Z" for identification.

3. The hearing of the suit is expedited.

4. In view of disposal of the Writ Petition and the Appeal from Order, the Civil Application No.1531 of 2013 for intervention to accordingly stand disposed of.

[R.M. SAVANT, J]