

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER NO. 50 OF 2015
WITH
CIVIL APPLICATION NO. 61 OF 2015 IN A.O. NO. 50 OF 2015
WITH
CIVIL APPLICATION NO. 610 OF 2015 IN A.O. NO. 50 OF 2015
A/W.
CIVIL WRIT PETITION NO. 8565 OF 2014
WITH
CIVIL APPLICATION NO. 697 OF 2015 IN W.P. NO. 8565 OF 2014**

Baliram Baburao Kokane & Ors.	...	Appellants/Petitioners
vs.		
M/s. Priyanka Builders	...	Respondents

Mr. S.G. Kudle, Advocate for the appellant/petitioner in W.P. No. 8565/2014.

Mr. R.S. Apte, Senior Advocate i/b. Mr. J.S. Kapre, Advocate for respondent no. 1.

Mr. Sukand Kulkarni with Mr. Pritesh G. Chandge, Advocate for proposed respondent nos. 1 and 2.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE : **1st September, 2015**

P.C.:

In this Appeal, the order dated 5th August, 2014 passed by 3rd Joint Civil Judge, Senior Division, Pune thereby granting interim injunction against the defendants in Special Civil Suit No. 622 of 2014 is challenged. Respondent no. 1 is the original plaintiff, who has filed the Special Civil suit for injunction simplicitor against defendant nos. 1 to 9 that they should not disturb the possession of the plaintiff in the suit property and they shall not trespass, encroach the suit property and also not to obstruct the construction activities of the plaintiff. The suit property is at Survey No. 48/4 to 10 admeasuring 4 Hectar 12 Ares at Mouje Rahatani, Pimpri Chinchwad. The land was owned by one Baburao Hari

Kokane, whose defendants claimed to be the legal heirs. Defendant no. 1 sold the land by registered sale deed to the family namely 'Punjabi', and the possession of the said land was handed over to Pappu Punjabi and Moti Punjabi by defendant no. 1. Further, it is the case of respondent no. 1/plaintiff that these Punjabi family by an agreement dated 26th December, 2006 gave development right of the said property in favour of the plaintiff, i.e, respondent no.1 and Power of Attorney was also executed in favour of the plaintiff/respondent no. 1 and at the same time, possession of the land was given to him. Thereafter, respondent no. 1 took steps for development and also carried on construction on the suit plot. However, defendants/appellants started obstructing respondent no. 1/plaintiff in the construction activity and also tried to encroach on the property. Thereafter a criminal case was also filed against the defendants/appellants. Therefore, respondent no. 1/plaintiff filed a suit for injunction against the appellants. Injunction was granted. Hence, this Appeal is filed by the defendants.

2. Along with this Appeal from Order, Writ Petition No. 8565 of 2015 is also filed by Baliram Baburao Kokane/present appellant no. 1 against the respondents wherein he has prayed for issuance of writ of certiorari seeking declaration that respondent no. 1 is liable to be punished under Indian Penal Code for taking law in his hands and also prayed for mandatory injunction that respondents shall not take any steps in respect of suit property and shall not alter the basic nature of the suit property. It

is also prayed in the Writ Petition that Special Civil Suit No. 622 of 2014 is to be decided along with counter claim filed by petitioner no. 9 Nitin Magan Kokane and with Regular Civil suit No. 188 of 1993 for partition was filed by Shriram Baburao Kokane pending in the Court of Joint Civil Judge, Junior Division, Pimpri. In the said suit, issues are framed on 10th August, 2012.

3. This Writ Petition and Appeal from Order are clubbed by the order of the Chief Justice and are to be heard together. Hence, both the matters are decided together. Hence, Rule. Rule made returnable forthwith. By consent, the petition is heard finally at the stage of admission.

4. The learned counsel Mr. Kudle has submitted that the order passed under Exhibits 5 and 45 by the trial Court is erroneous. The learned Judge has committed an error in recording the finding that the plaintiff/respondent no. 1 is in possession of the suit property though he did not produce any documentary evidence to show the fact of possession. In Regular Civil Suit No. 188 of 1993, one of the family members of defendants/appellants have asked for partition of the suit property. Respondent no.1/plaintiff is claiming his right in the suit property through Pappu Punjabi and Moti Punjabi, however, those two persons are not made party to the suit. Moti Punjabi and Pappu Punjabi have executed said power of attorney on 12th February, 2014 and

appointed one Vinod Chandnani, who has executed the document in favour of respondent no. 1/plaintiff. He submitted that respondent no.1/plaintiff has not paid the entire consideration amount to the appellants/defendants and the possession of the suit property was never given to respondent no. 1. He submitted that when the suit for partition is pending, learned Civil Judge Senior Division, Pune have committed an error in accepting the fact of execution of the sale deed in the year 1991. Respondent no. 1/ plaintiff has no legal right in the suit property. Respondent no.1 is in fact trespasser and by using muscle and money power, they have dispossessed the appellants/petitioners especially petitioner no. 9 from the suit property. He submitted that under such circumstances, the order passed by the learned Judge in Special Civil Suit No. 622 of 2014 is to be quashed and set aside. The learned Judge ought to have considered the document showing the possession of the petitioners/appellants of the suit property.

5. Learned counsel Mr. Apte submitted that out of 4 H 91R only 86 R is a suit property which is purchased by the plaintiff/respondent no. 1. He submitted that commencement certificate was issued on 17th November, 2013 and as on today, 5 buildings of 5 to 7 storied are constructed. RCC work of all the buildings is complete. He submitted that the respondents have purchased the land from Punjabis by registered sale deed dated 10th May, 2013. He submitted that if the recitals in the sale deed are seen, possession of the land was already handed over by Kokane family

to Moti Punjabi and Pappu Punjabi in 2006. He submitted that appellants/defendants have encroached the land and obstructed the possession and construction activity of respondent no.1/plaintiff, therefore the plaintiff/respondent no. 1 filed FIR against appellants. He submitted that in the Writ Petition, the petitioners are asking restoration of possession and in fact the Writ Petition is not maintainable for the said relief when AO is correctly filed. He relied on recitals in the sale deeds dated 10th July, 1990 and 15th July, 1991 of the suit property in favour of Moti Punjabi and Pappu Punjabi by Baliram Kokane and Ors. He submitted that in all 4 sale deeds were executed and development rights were assigned. In the year 1991, the suit land of 86R was sold by 4 sale deeds, out of which the consideration of Rs.1,20,000/- was paid in 3 sale deeds and Rs.50,000/- was paid in one sale deed. He further submitted that total 280 flats are constructed, out of which third party interest is created in 45 flats by registered agreement.

6. The suit is filed for simplicitor injunction and interim order is passed in favour of respondents restraining the appellants from obstructing their possession and construction activity. Perused the documents and the said order dated 5th August, 2014 of 3rd Joint Civil Judge Senior Division, Pune. By sale deed dated 15th July, 1991 Baliram Kokane, Karta of the family, sold 86 gunthas to one Moti Punjabi and Pappu Punjabi. The different sale deeds were executed on 10th July, 1991 and some on 15th July, 1991 between Moti Punjabi, Pappu Punjabi and Baliram Kokane.

Thereafter, members of Punjabi family executed development agreement in favour of the respondent on 26th December, 2006 and also executed Power of Attorney and thereafter executed sale deed on 30th November, 2013 in favour of the respondent. The main contention of the appellants was that the total consideration was not paid by Moti Punjabi and Pappu Punjabi to Baliram Kokane and his family. However, on query, the learned counsel for the appellants could not tell that how much amount was not paid and how much amount was received by the family by way of consideration of sale of land to Moti and Pappu Punjabi. The recitals in the sale deeds disclose that the possession was handed over by Baliram Kokane to Moti and Pappu Punjabi. When the appellants tried to obstruct the possession of the plaintiffs, a police complaint was filed by the plaintiffs. The submissions of learned counsel for the appellants that the appellants are in possession of the suit premises *prima facie* cannot be appreciated especially when RCC work of all the 5 buildings is complete and the buildings are standing on the land. The learned Judge of the City Court have rightly taken into account the fact of payment, the fact of possession and have rightly held that balance of convenience lies in favour of the plaintiffs and *prima facie* case is established, so the interim injunction is rightly granted. I do not think there is any reason to interfere with the said order. The Appeal and Writ Petitions both are dismissed along with all the Applications.

(MRS.MRIDULA BHATKAR, J.)

CERTIFICATE

Certified that the Judgment/Order uploaded is a true and correct copy of the original signed Judgment/Order.