

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.

MISC. CIVIL APPLICATION NO.1044 OF 2015

IN

WRIT PETITION NO.6814 OF 2014 (D)

(Anilsingh Ramlochansing Thakur ..vs.. Sau. Savita Mangilal Chavan and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.

DATED : 06-10-2015

Heard Shri R.L. Khapre, learned Advocate assisted
by Shri N.S. Deshpande, Advocate for the applicant.

2. By this application, the applicant (petitioner in Writ Petition No.6814/2014 and respondent No.4 in Writ Petition No.369/2014) seeks review of the order passed by this Court on 31-08-2015.

3. The contention on behalf of the applicant is that the petitioners in Writ Petition No.369/2014 (Sau. Savita Mangilal Chauhan and Mangilal Thawara Chauhan) are not entitled for the relief granted by this Court inasmuch as the suit property was transferred in the name of Sau. Gitai in execution of the decree passed in Special Civil Suit No.19/2005. It is submitted that the sale-deed which came to be executed pursuant to the decree passed in Special Civil Suit No.19/2005 contains specific averment that the possession of the land was given to Smt. Gitai/decreed-holder. It is submitted that the

applicant purchased the suit property from Smt. Gitai. The contention is that if Sau. Savita-the petitioner No.1 in Writ Petition No.369/2014 (plaintiff in Special Civil Suit No.24/2012) intends to raise any objection regarding the possession of the applicant over the suit field which is through Sau. Gitai, then the only course available to Sau. Savita is to file objection under Section 47 of the Code of Civil Procedure, 1908. It is submitted that Special Civil Suit No.24/2012 for the reliefs as claimed therein, is not maintainable. In support of the submissions, the learned Advocate for the applicant relied on the provisions of Section 47, Order XXI Rule 97 to Rule 103 of the Code of Civil Procedure and the following judgments :

- 1) The judgment given by the Hon'ble Supreme Court in the case of ***Premji Ratansey Shah vs. Union of India*** reported in ***1994 DGLS (Soft.) 636.***
- 2) The judgment given by this Court in the case of ***Sopan Maruti Thopte and another, etc. etc. vs. Pune Municipal Corporation and another*** reported in ***AIR 1996 Bom. 304.***
- 3) The judgment given by the Hon'ble Supreme Court in the case of ***Shreenath and another vs. Rajesh and others*** reported in ***AIR 1998 SC 1827(1).***
- 4) The judgment given by the Hon'ble Supreme

Court in the case of ***Prasantha Banerji vs. Pushpa Ashoke Chandani and others*** reported in ***AIR 2000 SC 3567 (2)***.

- 5) The judgment given by the Hon'ble Supreme Court in the case of ***N.S.S. Narayana Sarma and others vs. M/s. Goldstone Exports (P) Ltd. and others*** reported in ***AIR 2002 SC 251***.
- 6) The judgment given by the Hon'ble Supreme Court in the case of ***Usha Sinha vs. Dina Ram and Ors.*** reported in ***AIR 2008 SC 1997***.
- 7) The judgment given by the Karnataka High Court in the case of ***Commissioner, Bangalore Development Authority vs. M/s. Addl. Housing Industries Ltd. and Ors.*** reported in ***AIR 2008 Karnataka 117***.
- 8) The judgment given by the Hon'ble Supreme Court in the case of ***Inderchand Jain (D) through L.Rs. vs. Motilal (D) through L.Rs.*** reported in ***2009 DGLS (Soft.) 940***.

It is further submitted that it is well established that injunction cannot be granted against the true owner.

The learned Advocate for the applicant has submitted that the observations of this Court recorded in paragraph 3 of internal page No.9 of the order that Smt. Gitai has not filed any affidavit in support of Shri Anil, stating that she had been in possession of the suit field

and she handed over the possession of the suit field to Shri Anil at the time of execution of the sale-deed on 28-09-2012, are also not correct. It is submitted that Smt. Gitai has filed reply on affidavit before the trial Court, stating that she was in possession of the suit field. Though prima facie it appears that in the reply Smt. Gitai supported the claim of Shri Anil on the point of possession of the suit field, the letter given by Smt. Gitai and Shri Anil to the Assistant Registrar, Pusad on 28-09-2012 runs counter to the claim made by Smt. Gitai in reply.

4. The crux of the submissions made on behalf of the applicant is that the suit filed by Sau. Savita (plaintiff in Special Civil Suit No.24/2012 and petitioner No.1 in Writ Petition No.369/2014) is not maintainable and therefore, temporary injunction as granted by this Court by the impugned order could not have been granted. It is submitted that the provisions of Section 47, Order XXI Rule 97 to Rule 103 of the Code of Civil Procedure, 1908 and the law on the point have not been considered by this Court and there is an error apparent on the face of the record which necessitates the review of the order.

5. After considering the submissions made by the learned Advocate for the applicant, I find that the points which are now urged before the Court were not argued at the time of hearing of the petition. There is no

explanation as to why the points were not raised before the Court when the petitions came to be decided. Even otherwise I am not satisfied that the non-consideration of the above aspects, in the facts of the present case can be said to be the error apparent on the face of the record which necessitates the review of the order passed by this Court.

The miscellaneous civil application is dismissed.
No costs.

JUDGE

pma