

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

WRIT PETITION NO.369/2014

Sou. Savita W/o Mangilal Chuhan and another

..Versus..

Sou. Sunita W/o Dnyaneshwar Jamgade and others

AND WRIT PETITION NO.6814/2014

Anilsingh Ramlochansingh Thakur

..Versus..

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.

DATE : 31.8.2015

Heard Shri S.V. Purohit, learned advocate for the petitioners
(in Writ Petition No.369/2014) and Shri N.S. Deshpande, learned
advocate for the respondent no.4 (in Writ Petition No.369/2014).

Heard Shri N.S. Deshpande, learned advocate for the petitioner
(in Writ Petition No.6814/2014) and Shri S.V. Purohit, learned
advocate for respondents 1 and 2 (in Writ Petition No.6814/2014).

Smt. Gitai Lavkush Gajbi (defendant no.3) filed Special Civil
Suit No.19/2005 against Sou. Sunita w/o Dnyaneshwar Jamgade
(defendant no.1) and Shri Dnyaneshwar Aniruddha Jamgade
(defendant no.2) praying for decree for specific performance of

contract in respect of the suit field. According to Sou. Gitai she had entered into an agreement in respect of the suit field with Sou. Sunita on 28th July, 2004, however, Sou. Sunita was not executing the sale-deed as per the contract and Sou. Gitai was required to file the civil suit. Sou. Gitai prayed for directions to Sou. Sunita to execute the sale-deed in respect of the suit field and to hand over the possession of the suit field to Sou. Gitai. During the pendency of the Special Civil Suit No.19/2005, Sou. Savita had filed an application praying for temporary injunction restraining Sou. Sunita from alienating the suit field. The trial Court by an order dated 31st March, 2005 restrained Sou. Sunita from creating any third party interest in the suit field. The trial Court by the order dated 29th April, 2005 confirmed the temporary injunction restraining Sou. Sunita from alienating or creating third party interest in the suit field. The Special Civil Suit No.19/2005 came to be decreed on 29th September, 2011. Sou. Sunita is directed to execute the sale-deed of the suit field in favour of Sou. Gitai. The Court further directed Sou. Sunita to hand over possession of the suit field to Sou. Gitai. Sou. Sunita executed sale-deed in respect of the suit field, pursuant to the decree, on 24th October, 2011 in favour of Sou. Gitai.

Sou. Savita Mangilal Chavhan filed an application before this

Court seeking leave to file appeal challenging the judgment and decree passed in Special Civil Suit No.19/2005. According to Sou. Savita, she was in possession of the suit field since 2007 having been put in possession by Shri Mangilal Chavhan (husband of Sou. Savita), who was constituted Attorney of Sou. Sunita Dnyaneshwar Jamgade. As the jurisdiction of District Court was enhanced, the proposed appeal of Sou. Sunita came to be transferred to District Court. The learned District Judge by the judgment dated 26th July, 2012 refused leave to Sou. Savita to file appeal against the judgment and decree passed in Special Civil Suit No.19/2005. The learned District Judge recorded that the claim of Sou. Savita was based on the grounds that Sou. Gitai, Sou. Sunita and Shri Dnyaneshwar had played fraud and the allegations made by Sou. Savita were required to be proved by her after leading evidence. The learned District Judge granted liberty to Sou. Savita to initiate appropriate proceedings, if so advised.

Sou. Savita filed Special Civil Suit No.24/2012 praying for decree for declaration that the judgment and decree passed in Special Civil Suit No.19/2005 on 29th September, 2011 has been obtained in collusion by playing fraud on the Court and it be declared as illegal, for decree for declaration that the sale-deed executed by Sou. Sunita in

favour of Smt. Gitai on 16th November, 2011, without handing over possession, is not binding on Sou. Savita. Sou. Savita prayed for decree for injunction restraining Sou. Sunita, Shri Dnyaneshwar and Smt. Gitai from interfering with her possession over the suit field.

During the pendency of this civil suit, Smt. Gitai executed sale-deed in respect of the suit field in favour of Shri Anil Ramlochan Thakur on 28th September, 2012. Sou. Savita amended the plaint, impleaded Shri Anil as the defendant no.4 and prayed for decree for declaration that the sale-deed executed by Smt. Gitai in favour of Shri Anil is illegal and void. Sou. Savita prayed for decree for injunction restraining Shri Anil from interfering with her possession over the suit field. Shri Anil (defendant no.4) has filed counter claim.

Sou. Savita (plaintiff) filed an application (Exh. No.53) praying for temporary injunction. Shri Anil (defendant no.4) also filed an application (Exh. No.77) praying for temporary injunction. Sou. Savita and Shri Anil both claimed that they were in possession of the suit field. The learned trial Judge passed the order on 7th September, 2013, rejected the application (Exh. No.53) filed by Sou. Savita and allowed the application (Exh. No.77) filed by Shri Anil. The learned trial Judge restrained Sou. Savita and her husband Mangilal from

disturbing the possession of Shri Anil over the suit field during the pendency of the counter claim filed by Shri Anil.

Sou. Savita being aggrieved by the order passed by the learned trial Judge rejecting her application (Exh. No.53) and allowing the application filed by Shri Anil (Exh. No.77), filed Miscellaneous Civil Appeal No.37/2013. The learned District Judge, by the impugned order, partly allowed the appeal and set aside the order passed by the trial Court restraining Sou. Savita and Shri Mangilal from interfering with the possession of Shri Anil over the suit field. The learned District Judge rejected the application (Exh. No.53) and the application (Exh. No.77).

Sou. Savita being aggrieved by the order passed by the learned District Judge, has filed Writ Petition No.369/2014.

Shri Anil being aggrieved by the order passed by the learned District Judge, has filed Writ Petition No.6814/2014.

As both writ petitions arise out of the same order and the point which is required to be adverted to is same, the writ petitions are disposed of by the common judgment.

The point which is required to be adverted to is :

“Who was in possession on the date of filing of the

Special Civil Suit No.24/2012?"

The claim of Sou. Savita, as pointed out by Shri S.V. Purohit, learned advocate, from the judgment passed by the learned District Judge in Regular Civil Appeal No.33/2012 is that she was put in actual physical possession of the suit field by Shri Mangilal Chavhan, in the capacity as the constituted Attorney of Sou. Sunita. Sou. Savita has relied on the sale-deed executed in her favour, registered on 16th September, 2010 which contains the averment that possession of suit field is given to her. In addition, she relies on the entries in 7/12 extracts which show that the suit field was in possession of Shri Mangilal Chavhan from 2007 till 2010 and then the suit field is in possession of Sou. Savita from 2010 onwards. Shri Purohit, learned advocate has further pointed out that the suit field is mortgaged by Sou. Savita to Bharti Maind Nagri Sahakari Pat Sanstha Maryadit, Pusad on 4th March, 2011 and entry regarding that has been taken in the 7/12 extract. The learned advocate for Sou. Savita has submitted that the sale-deed executed in favour of Shri Anil does not contain the averment that possession of the suit field has been handed over to Shri Anil.

Shri Anil has relied on the sale-deed executed by Smt. Gitai Gajbi in his favour on 28th September, 2012. To substantiate the claim that he is in possession of the suit field, Shri Anil has relied on the entries in the 7/12 extracts showing the mutation of his name effected on 3rd October, 2012 and the certificate issued by the Talathi on 27th July, 2013 (Exh. No.84) stating that the suit field was in possession of Shri Anil and that he had sown soyabean crops in 2013 - 2014. Shri Anil has relied on the copy of Gao Namuna 8 dated 31st July, 2013 showing his possession over the suit field. Shri Anil has filed copy of electric bill of Rs.30/- of July, 2013 and the receipt of payment of it. Shri Anil has filed copy of receipt showing payment of premium of Rs.300/- towards the crop insurance policy. These documents are of 2013 - 2014.

Shri Purohit, learned advocate has pointed out, from the certificate dated 27th July, 2013 issued by the Talathi in favour of Shri Anil, endorsement that the certificate is issued on the basis of the information given by Shri Anil and subsequently, if it is found that the information was not correct, the certificate shall stand cancelled. Relying on this endorsement, it is submitted by the learned advocate

that the certificate cannot be relied upon to examine the veracity of the contention of Shri Anil that he is in possession of the suit field.

After considering the rival contentions and examining the documents on the record of both the writ petitions, I find that the copies of the revenue records relied upon by Sou. Savita and Shri Anil to substantiate their claim regarding the possession over the suit field cannot be relied upon. *Prima facie*, it appears that the entries in the revenue records have been mutated by the revenue authorities, for the asking by the concerned parties.

The most important document which is relevant for deciding the point as to who is in possession of the suit field is the letter given by Sou. Gitai and Shri Anil to the Assistant Registrar, Pusad on 28th September, 2012. It is stated in this letter that the averment regarding handing over of possession of the suit field to Shri Anil has not been incorporated in the sale-deed and the final decision of the Court in that regards would be accepted. It is further stated that the parties will not deal with the *inter se* transfer of possession of the suit field. This document has not been properly appreciated by the subordinate Courts. Furthermore, Sou. Gitai and Shri Anil has not explained as to

why Sou. Gitai has not filed any affidavit in support of Shri Anil stating that possession of suit field has been given over to Shri Anil.

The payment of electricity bill and the payment of insurance premium do not show physical possession of Shri Anil over the suit field.

Sou. Savita has been contending, as recorded in the judgment given in Regular Civil Appeal No.33/2012 that she is in possession of suit field from 2007,. Shri Anil was not in the picture till he purchased the suit field on 28th September, 2012. Smt. Gitai was party to Regular Civil Appeal No.33/2012 but she 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 28th September, 2012. Considering these facts, I come to the conclusion that *prima facie*, Sou. Savita has established her possession over the suit field at the time of filing of the Special Civil Suit No.24/2012.

As Sou. Savita and Shri Anil both claimed that they had been cultivating the suit field, I enquired from Shri Purohit and Shri Deshpande, learned advocates for the respective parties about the income from the suit field. Both the learned advocates have submitted

that the income might be around to Rs.40,000/- per year.

In my view, the following order would sub-serve the ends of justice :

- (i) Sou. Savita Mangilal Chavhan (plaintiff) shall continue to be in possession of the suit field till the decision of the civil suit.
- (ii) Sou. Savita shall deposit Rs.30,000/- with the trial Court.
- (iii) The amount of Rs.30,000/- shall be deposited by Sou. Savita till 30th November, 2015.
- (iv) The learned trial Judge shall pass appropriate orders regarding the disbursement of this amount, at the time of final disposal of the civil suit.
- (v) The learned advocates submits that the suit is fixed for recording of evidence. The learned trial Judge is requested to dispose of the civil suit till 15th March, 2016.
- (v) Writ petitions are disposed in the above terms.

In the circumstances, the parties to bear their own costs.

JUDGE