

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1036 OF 2014

RAMABAI LAXMAN FATPURE
VERSUS
GANPAT MAHADEO SHIRSE AND OTHERS

...

Advocate for Petitioner : Mr. K.F. Shingare
Advocate for Respondent No.1 : Mr. S.B. Kotkar
Advocate for respondent Nos. 2 to 4: Mr. N.V. Gaware

.....

CORAM : V. K. JADHAV, J.
DATED : 9th FEBRUARY, 2016

PER COURT:-

1. The petitioner-plaintiff instituted a suit bearing R.C.S. No. 376 of 2012 for declaration and perpetual injunction in respect of suit property CTS No. 1087, situated at Pathardi. Learned Judge of the trial court, by order dated 6.9.2012 issued ad-interim injunction and thereafter, by order dated 21.12.2012 confirmed the said ad-interim injunction by allowing application Exh.5. Being aggrieved by the same, respondent Nos. 2 to 4 original defendants, preferred Misc. Civil Appeal No. 9 of 2013 in the District Court, Ahmednagar. The learned District Judge-5, Ahmednagar, by judgment and order dated 29.6.2013 allowed the said appeal by setting aside order dated 21.12.2012 passed below Exh.5 in R.C.S. No. 376 of 2012 and rejected the said application. Hence, this writ petition.

2. Learned counsel for the petitioner submits that on 4.8.2012 the respondent Nos. 2 to 4 original defendants filed an application before the Chief Officer, Municipal Council, Pathardi admitting therein the possession of the plaintiff over the suit property. Learned counsel submits that on the basis of said application even the Chief Officer, Municipal Council, Pathardi, on 8.10.2012 issued notice to the son of the petitioner-plaintiff for removal of obstruction. Learned counsel submits that the petitioner-plaintiff is in possession of suit property. Learned Judge of the trial court has rightly allowed application Exh.5 thereby restraining the defendants from causing any obstruction to the peaceful possession of petitioner-plaintiff. Learned counsel submits that the learned District Judge has not considered the documents placed on record and thus arrived at erroneous conclusion.

3. Learned counsel for respondent Nos. 2 to 4 submits that the petitioner-plaintiff Ramabai had executed a sale deed of the part of CTS 1087 to the extent of her share to respondent No.1 Ganpat Mahadeo Shirse for valuable consideration. Accordingly, mutation entry No. 619 came to be sanctioned in the name of said Ganpat Shirse. Learned counsel further submits that thereafter on 10.5.2012 said Ganpat Shirse sold out a part of said property CTS No. 1087 admeasuring 65.60 sq. meters to respondent Nos. 2 to 4 original

defendants under registered sale deed for valuable consideration. Accordingly, mutation entry No. 1859 came to be sanctioned in their names and the entry is also taken in the record of Municipal Council wherein the said property is numbered as house No. 83/1. Even the respondent Nos. 2 to 4-original defendants applied for permission of construction and the same was also granted. Learned counsel submits that considering the documents placed on record, the learned District Judge has rightly set aside the order passed by the trial court below Exh.5 and allowed the appeal.

4. I have also heard the learned counsel for respondent No.1. None present for other respondents.

5. Admittedly, the suit property was originally owned by one Rambhau @ Ramji Chudaman Bange, who happened to be father of petitioner-plaintiff. After demise of said Rambhau @ Ramji, name of the petitioner-plaintiff Ramabai, Deokabai, Radhakishan and Laxman were recorded as his legal heirs. After demise of Radhakishan, name of his sons Devidas, Shantilal and wife Rukhmini are recorded vide mutation entry No. 608. It appears from the documents and observations made by the trial court and the learned District Judge that part of property of CTS No. 1087 was sold by Ramabai and Laxman under registered sale deed dated 7.1.2003 for valuable

consideration to respondent No.1 Ganpat Shirse. Thereafter, the mutation entry No. 619 came to be effected in the name of said Ganpat Shirse. In the year 2012, said Ganpat Shirse sold out part of the property purchased by him from Ramabai and Laxman of CTS No. 1087 admeasuring 65.60 sq. meters, under registered sale deed for valuable consideration to present respondent No. 2 to 4, original defendants.

6. The petitioner-plaintiff, however, contends that her deceased father Rambhau @ Ramji borrowed certain amount from one Motilal Uklaji Batode, however, he was not able to repay the said amount. Consequently, the petitioner-plaintiff from her own earnings paid the amount to said Motilal Batode and accordingly, said Motilal Batode has executed an agreement on stamp papers of Rs.10/- dated 25.11.1988 in her favour. It appears that the petitioner-plaintiff claims her possession over entire portion of said property on the basis of such unregistered document, which has been executed on stamp paper of Rs.10/-. Thus, the learned district Judge has rightly observed that the petitioner-plaintiff has failed to prove prima facie case and balance of convenience lies in favour of respondent Nos. 2 to 4. I find no fault in the order passed by the learned District Judge-5, Ahmednagar, dated 29.6.2013 in Misc. Civil Appeal No. 9 of 2013 and therefore, writ petition devoid of any merits and same is liable to

be dismissed.

7. In the light of above discussion, there is no substance in the writ petition and the same is accordingly dismissed. In the circumstances, there shall be no order as to costs.

8. At this stage, learned counsel for the petitioner prays for stay to this order for a period of 15 days. However, since the matter is decided on merits, I am not inclined to grant the said prayer and it is accordingly rejected.

(V. K. JADHAV, J.)

rlj/