

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO.4687 OF 2016

INDERLAL TULROMAL KAMORA

PETITIONER

VERSUS

THE STATE OF MAHARASHTRA  
AND OTHERS

RESPONDENTS

Mr.A.H.Kasliwal, Advocate for the petitioner.

Mr.D.R.Korde, AGP for respondent Nos. 1 to 4.

( CORAM : RAVINDRA V. GHUGE, J.)

DATE : 25/04/2016

PER COURT :

1. I have heard the learned Advocates for the respective sides.
2. The petitioner has filed RCS No.433/2009 before the Trial Court claiming a declaration with regard to his right, title and interest over land admeasuring 23R in land Gat No.25. The petitioner has also sought injunction against the respondents for preventing further construction and creating any third party interest.
3. The petitioner is before this Court against an interlocutory order dated 17/01/2015 passed by the Trial Court, by which his application for temporary injunction and for restraining defendant

No.7 from constructing or alienating the property, has been rejected. The petitioner is also aggrieved by the judgment of the Appeal Court dated 17/12/2015 by which Misc.Civil Appeal Nos.17/2015 and 18/2015 filed by the petitioner have been dismissed with costs.

4. Mr.Kasliwal, learned Advocate for the petitioner contends that the petitioner had purchased the land admeasuring 23R in 1979 that falls under Gat No.125. Defendant Nos. 5 and 6 also claimed to have purchased the same land in 1971. Dispute with regard to the same is pending in RCS No.433/2009. It is strenuously submitted that the construction which is commenced by defendant No.7 ought not to be carried forward and the said construction deserves to be halted.

5. It is further stated that there was an injunction against the construction granted by the Lower Court in an earlier proceeding in a criminal Revision Petition No.188/2008. Considering the order passed by the Court in the said proceeding whereby 'status quo' with regard to the said property has been ordered, both the lower Courts i.e. the Trial Court as well as the Appeal Court should have granted an injunctory order and should have allowed the application for injunction.

6. During the course of hearing in this matter, learned Advocate for the petitioner was called upon to point out whether any submissions were advanced before the Trial Court with regard to an injunction granted in the criminal revision application. The reply offered by the learned Advocate, on instructions, is that though this submission was put forth before the Trial Court as well as the Appeal Court, they were not recorded in the impugned orders.

7. I, therefore, called upon the petitioner to point out whether the copy of the order referred to with regard to the Criminal Revision Application was placed before the Lower Courts. Learned Advocate submits on instructions that the same does not appear in the list of the documents dated 16/01/2009 filed alongwith the suit.

8. Mr.Kasliwal places reliance upon the judgment of the Hon'ble Supreme Court (3 Judges Bench) in the matter of Maria Margarida Sequeria Fernandes and others Vs.Erasmo Jack de Sequeria (Dead) through LR's, 2012 ALL SCR 1096 and especially paragraph Nos. 32, 33 and 70.

9. I have considered the submissions of the learned Advocate for the petitioner.

10. The Apex Court in the matter of Maria Margarida (supra) has observed in paragraph Nos. 32, 33 and 70 as under :-

*“32. Truth alone has to be the foundation of justice. The entire judicial system has been created only to discern and find out the real truth. Judges at all levels have to seriously engage themselves in the journey of discovering the truth. That is their mandate, obligation and bounden duty.*

*33. Justice system will acquire credibility only when people will be convinced that justice is based on the foundation of the truth.*

*70. It would be imperative that one who claims possession must give all such details as enumerated hereunder. They are only illustrative and not exhaustive.*

- (a) who is or are the owner or owners of the property;*
- (b) title of the property;*
- (c) who is in possession of the title documents*
- (d) identity of the claimant or claimants to possession;*
- (e) the date of entry into possession;*
- (f) how he came into possession - whether he purchased the property or inherited or got the same in gift or by any other method;*
- (g) in case he purchased the property, what is the consideration; if he has taken it on rent, how much is the rent, license fee or lease amount;*

- (h) If taken on rent, license fee or lease - then insist on rent deed, license deed or lease deed;*
- (i) who are the persons in possession/occupation or otherwise living with him, in what capacity; as family members, friends or servants etc.;*
- (j) subsequent conduct, i.e., any event which might have extinguished his entitlement to possession or caused shift therein; and*
- (k) basis of his claim that not to deliver possession but continue in possession.”*

11. It is, therefore, apparent from the view taken by the Hon'ble Supreme Court that the Judges and the Lawyers must ensure that truth triumphs in administration of justice. Truth alone has to be the foundation of justice. Justice system will acquire credibility only when people will be convinced that justice is based on the foundation of truth. The entire judicial system has been created only to discern and find out the truth.

12. The Trial Court has rejected the application for injunction by the impugned order after coming to a conclusion that the defendant No.7 has resorted to a construction being in possession of the suit property on the basis of a sale deed executed in 1971. Defendant

No.6 had effected the sale deed and executed the same in favour of defendant No.7 who has initiated the construction. The petitioner claims to have a share over 23 R of the land in the said property.

13. The Lower Courts as well as this Court find that there is no mention of the petitioner in any of the revenue records with regard to his claim over 23 R land. The Trial Court, therefore, came to a conclusion that the petitioner is not in possession of the suit property.

14. The Appeal Court has also considered the submissions of the petitioner and has dismissed the appeal on 17/12/2015. It is concluded that there is no trace of the ownership of the petitioner over the suit land, at a prima facie stage in the suit. It is also concluded that there is nothing on record to indicate the transfer of possession of the suit property and the petitioner having been put in possession.

15. In my view, the illustrative details to indicate possession on a property as has been culled out by the Hon'ble Supreme Court in paragraph No.70 of the Maria judgment (supra) are not satisfied by the petitioner.

16. At this juncture, learned Advocate for the petitioner submits on instructions that the petitioner desires to withdraw this petition.

17. In the light of the above, this petition is dismissed as withdrawn. As such, the observations set out in the above portion of this order shall be restricted only to the extent of the interim order passed by the Trial Court. Learned Advocate for the petitioner prays for expediting the suit which is instituted in 2009. The petitioner is at liberty to request the Trial Court to expedite the suit.

( RAVINDRA V. GHUGE, J.)