

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5315 OF 2015

Hirkanabai W/o Narsing Garad .. Petitioner

Versus

Kalawati W/o Dnyaneshwar Garad
and others .. Respondents

Shri Satish S. Manale, Advocate for the Petitioner.

Respondent No. 1 served.

Shri R. B. Deshmukh, Advocate for Respondent Nos. 2 to 6.

CORAM : S. V. GANGAPURWALA, J.

DATE : 21ST MARCH, 2016.

PER COURT :-

1. The present petitioner is the original complainant who has filed suit for injunction on the basis of the registered sale deed executed by defendant No. 1 in favour of the plaintiff to the extent of 83 R. land. The Trial Court allowed the application for injunction. In appeal filed by the defendants the Appellate Court allowed the appeal rejecting the application for injunction **Exh. 5.** Aggrieved thereby plaintiff has filed present petition.

2. Mr. Manale, the learned counsel for the petitioner strenuously contends that the petitioner is owner and possessor of the suit land pursuant to the registered sale deed dated 21.02.2012 executed in favour of the petitioner by the defendant No. 1. The respondents are interfering in the possession of the petitioner. Mutation entry is not challenged

by the respondents. The name of the petitioner is shown in the possession column also. The registered sale deed and its recital have a presumptive value at least at the stage of deciding application **Exh. 5**. According to the learned counsel, the Trial Court has exercised the discretion in favour of the present petitioner. The Appellate Court ought not to have interfered with the said discretion.

3. Mr. Deshmukh, the learned counsel for the respondents supports the order.

4. No doubt, Appellate Court has to be loath in interfering with the discretion exercised by the Trial Court. The Appellate Court has observed that in the memorandum of partition the boundaries are nowhere stated. However, in the sale deed specific boundaries are stated. The Appellate Court has observed that when in the said memorandum of partition exact boundaries were not stated then there is no basis to state specific boundaries in the sale deed. The affidavits are not filed of any adjoining owners also. Considering the above it will be appropriate to direct the Trial Court to dispose of the suit expeditiously.

5. Considering the above, I pass the following order -

ORDER

I] The Trial Court shall decide the suit bearing R. C. S. No. 69 of 2013 expeditiously and preferably within nine (9) months.

II] The Trial Court shall decide the suit on its own merits, without being influenced by the orders passed by the Appellate Court and this Court at the time of deciding application **Exh. 5** as the same is based only of prima facie consideration.

6. The writ petition is disposed of. No costs.

[S. V. GANGAPURWALA, J.]

sam/Mar.16