

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4801 OF 2013

LATA MADHUKAR KULTHE
VERSUS
SUSHILA NARHARI UDAWANT AND OTHERS

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Advocate for Petitioner : Shri Gawali Amol K.
Advocate for Respondents 1 to 3 : Shri Kasar R.S.
Advocate for Respondents 23 & 25 : Shri Badakh V.S.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: April 26, 2016
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PER COURT :-

1. This petition is pending admission from 11.6.2013. Interim relief has not been granted by this Court to the petitioners.
2. The petitioner is aggrieved by the interlocutory order dated 10.12.2012, by which, application Exhibit 5 filed by the plaintiffs in Special Civil Suit No.176 of 2011 has been partly allowed. Similarly the petitioner is aggrieved by the judgment dated 4.5.2013, delivered by the Appeal Court by which, Misc. Civil Appeal No. 8 of 2013 has been dismissed with costs.
3. The petitioner is aggrieved on account of the refusal of the trial Court and the Appeal Court in granting injunctory orders in the nature of "not to create third party interest" with regard to the suit property 1D(5) in CTS No.288 and 1D(A) in CTS no.287.
4. The petitioner contends that the above mentioned two portions of

the suit property were owned by the deceased Narhari, who is the father of the petitioner. After his death, the said properties were inherited by the petitioner and defendants 1, 2 and 4 to 6 as the L.Rs. of deceased Narhari. This being the thrust of the submissions of the petitioner, they were not properly considered by the trial Court as well as by the Appeal Court.

5. Learned Advocate for the petitioner has strenuously criticized the impugned order of the trial Court to the extent of refusing to grant injunction with regard to the above said suit properties. He has criticized the impugned judgment of the Appeal Court with equal vehemence.

6. Shri Badakh, learned Advocate appearing on behalf of respondent Nos.23 and 25 supports the impugned judgment.

7. I have considered the submissions of Shri Gawali, Shri Kasar and Shri Badakh, learned Advocates for the petitioner and respondent Nos. 1 to 3, 23 and 24. The petition is dismissed against respondents 12 and 16. Rest of the respondents, though served, have not entered an appearance.

8. It is trite law that an injunction can be granted if the plaintiff makes out a strong prima facie case. An injunction is aimed at preventing the frustration of the suit and the rights of the plaintiff. If the plaintiff is able to establish a right, title or interest in the properties at issue, the Court can grant injunction to prevent the frustration of such rights.

9. Application Exhibit 5 has been partly allowed by the trial Court upon being convinced that defendant Nos.1, 2 and 4 to 6 are likely to create third party interest in the properties mentioned in the impugned order. With regard to the two properties mentioned above, the petitioner could not establish, at a prima facie stage, any right, title or interest in the said properties. The copy of the CTS No. 288 did not indicate that the deceased Narhari owned the said suit property. No revenue records placed before the Court indicated the name of the deceased Narhari or the petitioner. In so far as, CTS No.287 is concerned, none of the litigating sides have produced any CTS extract or revenue records. The petitioner failed to indicate the ownership of the deceased Narhari with regard to CTS No.287.

10. Considering the above, the trial Court declined injunction in favour of the petitioner with regard to the properties in CTS No.287 and 288. For the same reasons, the appeal Court concluded in paragraph No.15 of the impugned judgment that the properties mentioned do not appear to be in the possession of the plaintiff and the name of deceased Narhari does not appear in any records.

11. As such, I do not find that the impugned orders could be termed as being perverse or erroneous. This petition is, therefore, dismissed.

12. Learned Advocate prays for expediting Special Civil Suit No. 176 of 2011.

13. Considering the said request, the trial Court is requested to decide Special Civil Suit No.176 of 2011 expeditiously.

(RAVINDRA V. GHUGE, J.)

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