

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

928 WRIT PETITION NO. 10666 OF 2015

POPAT KISANRAO MULE AND ANOTHER
VERSUS
NANDUBAI LAXMAN JAIBHAYE

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Advocate for Petitioners : Mr. Rahul P. Dhase
Advocate for Respondent-sole : Mr. R. B. Dhakne

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CORAM : V. K. JADHAV, J.

DATED : 25th FEBRUARY, 2016

PER COURT :-

1. By consent of parties, heard finally at admission stage itself.
2. The respondent-original plaintiff instituted a suit bearing Regular Civil Suit No. 265 of 2013 for a decree of perpetual injunction against the petitioners-original defendants in respect of land bearing Survey No.39/2/AA admeasuring 62R and land Survey No.377/A admeasuring 12R situated at village Pimpalner, Taluka Shirur (Ka.), District Beed. Petitioners have strongly resisted the suit by filing written statement. Respondent-plaintiff had also filed application Exh.5 for issuance of temporary injunction. Petitioners-defendants also resisted the said application. Learned Civil Judge Junior Division, Shirur (Ka.), by order dated 12.09.2014, rejected the application for temporary injunction Exh.5 filed by respondent-

plaintiff. Being aggrieved by the same, respondent-plaintiff preferred Miscellaneous Civil Appeal No.93 of 2014 before District Court, Beed. Learned District Judge-3, by impugned judgment and order dated 10.08.2015, allowed the appeal and thereby quashed and set aside the order passed by the trial court and accordingly, application Exh.5 came to be allowed. Hence this writ petition.

3. Learned counsel for the petitioners submits that the sale deed alleged to have been executed in favour of respondent-plaintiff dated 11.04.2011 was not a transaction of sale. The petitioners-defendants were in need of certain amount and accordingly, they borrowed amount from respondent-plaintiff and accordingly, executed a nominal sale deed in favour of respondent-plaintiff as security to the amount borrowed. Learned counsel submits that the petitioners/defendants have constructed a well in the bed of 'Balepara' river and accordingly, laid a pipeline for irrigating the said land. Learned counsel further submits that the petitioners-defendants are also residing along with family members in the farmhouse situated in the suit land. On the basis of the complaint lodged by petitioners-defendants, Crime No. 31 of 2014 came to be registered in the concerned Police Station. Learned counsel further submits that even the Gram Panchayat has issued a certificate in favour of the petitioners-defendants contending therein that they are residing

in the farmhouse situated in the suit property. Learned counsel submits that trial court has considered the entire evidence and accordingly, rejected the application Exh.5. Learned counsel submits that the District Judge has given more importance to the recitals in the sale deed and thus, arrived at a wrong conclusion.

4. Learned counsel for the respondent-original plaintiff submits that the transaction was an out and out sale. In light of the sale deed executed in favour of respondent-plaintiff by the petitioners-defendants, mutations came to be effected in the Revenue record. Learned counsel submits that respondent-plaintiff purchased both the lands under a registered sale deed for a valuable consideration and there is specific recital that on the date of execution of sale deed, possession was handed over to respondent-plaintiff. Learned counsel submits that District Judge-3 has rightly allowed the appeal and quashed and set aside the order passed by the trial court. There is no merit in the writ petition and the same is liable to be dismissed.

5. It is needless to state that at the time of consideration of application Exh.5, it is not possible to draw any inference about the real transaction as intended by the parties. The sale deed is placed on record. It appears from the contents of the sale deed that it is a transaction of out and out sale and the suit property was sold to

respondent-plaintiff by the petitioners-defendants under registered sale deed for a valuable consideration. Furthermore, there is a specific recital in the sale deed that possession of the land was handed over to respondent-plaintiff on the date of execution of the sale deed itself. It is true that in the sale deed, there is no mention about the bore well and the farmhouse constructed in the suit land. However, there is a specific recital in the sale deed that along with all the rights, the property is sold to the respondent-plaintiff. Furthermore, the suit lands are mutated in the name of respondent-plaintiff on the basis of sale deed dated 11.04.2011 and the mutation entry 4228 came to be sanctioned. Learned District Judge has rightly observed that if the petitioners-defendants' contention is accepted that they have constructed bore well on the bed of the river and not in the suit land Survey No. 39/2/AA, then, necessary permission is required in this regard. Furthermore, the same cannot be treated as a property belonging to the petitioners-defendants. Learned District Judge has rightly observed that the Gram Panchayat has no jurisdiction to issue any certificate about the present residence of petitioners-defendants. On the basis of the record, the Village Panchayat can issue certificate in respect of any house or other properties situated within the *Gaothan* area. So far as the complaint filed under the Maharashtra Money Lending Act is concerned, learned counsel for respondent-plaintiff has pointed out

that the Sessions Court at Beed has quashed and set aside the order of issuance of process against the respondent-plaintiff and her husband for the offences punishable under the provisions of Maharashtra Money Lending Act.

6. In light of above discussion, I do not find any fault in the impugned judgment and order passed by District Judge-3, Beed. There is no substance in the writ petition. Thus, the writ petition is hereby dismissed. In the circumstances, there shall be no order as to costs.

(V. K. JADHAV, J.)

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