

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO. 836 OF 2014

1. Sultana Farjad Ali
Age: 57 years, Occu. Household,
2. Kamarbano Farjad Ali
Age: 52 years, Occu. Ration Shop Holder
3. Parveenbano Parvez Khan
Age: 47 years, Occu. Teacher

All R/o. Opposite Dr. Sanjay Desale's Clinic
Nehru Nagar, Deopur, Dhule
Tq. & Dist. Dhule

...PETITIONERS

(Orig.Defendants No.1 to 3)

VERSUS

1. Salamattulla Farjid Ali
Age: 81 years, Occu. Nil,
R/o. Nehru Nagar, Bhand Pura,
Lane No.2, Dhule, Tq. & Dist. Dhule

...RESPONDENTS

Respondent No.1
Orig.Plaintiff

2. Dhule Municipal Corporation
Through its Commissioner,
Dhule Municipal Corporation Building,
Dhule, Tq. & Dist. Dhule
3. The Administrative Officer
Educational Department,
Dhule Municipal Corporation,
Dhule, Tq. & Dist. Dhule

Respondents
No. 2 and 3
Original Defendants
No. 4 and 5.

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Mr. C. R. Deshpande, Advocate for petitioners
Mr. G. R. Syed, Advocate for respondent No.1

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CORAM : SUNIL P. DESHMUKH, J.

DATE : 11th JULY, 2016

ORAL JUDGMENT :

1. Rule. Rule returnable forthwith. Heard Mr. C. R. Deshpande, learned counsel for the petitioners and Mr. G. R. Syed, learned counsel for respondent No.1 finally, with consent.

2. Respondent No.1 has instituted Regular Civil Suit No. 19 of 2011 in the court of Civil Judge, Senior Division, Dhule, seeking declaration of ownership and injunction against the present petitioners and respondents No. 4 and 5 - Municipal Corporation, Dhule and its officer in respect of properties bearing CTS No.4025 and 4245A-1A, both situated within the limits of Municipal Corporation, Dhule.

3. Learned counsel Mr. Deshpande, submits that late Farjad Ali had two wives – one Fatimabi who has three children – the petitioners i.e. defendants No. 1 to 3 and other Sakina. Plaintiff has been begotten to said Farjad Ali from said Sakina. According to him, suit property bearing CTS No.4245A-1A had been given to Fatimabi – mother of

defendants No. 1 to 3 by Farzad Ali absolutely, about 60 years before aforesaid suit had been instituted by plaintiff-respondent No.1. He submits that after demise of Fatimabi, said property had been divided among the petitioners - defendants No. 1 to 3 and has been accordingly dealt with by them. Aforesaid property had been given on rent to Municipal school and rent was being uninterruptedly paid to them. There is lot of record available showing and establishing above.

4. Learned counsel further contends that the municipal authorities on some pretext under a purported resolution, shown property bearing CTS No. 4245A-A1 to have been delivered to plaintiff-respondent No.1. He submits that in the circumstances the real owners – defendants No. 1 to 3 have been deprived of the benefit from the property which had been illegally shown to have been delivered to plaintiff-respondent No.1. Plaintiff has no rights over said property.

5. It is further being contended that the plaint has been craftily drafted without referring to that the relationship among the parties is a step relationship. He further contends that taking stock of the situation the trial court has rightly

rejected the request for temporary injunction under an application Exhibit-5 filed by the plaintiff.

6. He submits that, however, the appellate court in Miscellaneous Civil Appeal No. 30 of 2012 filed by the plaintiff-respondent No.1 took altogether different view and has reversed the judgment and order of the trial court on Exhibit-5 and has allowed the appeal and thus, the petitioners are before this court.

7. Mr. C. R. Deshpande, learned counsel submits that the appellate court has unnecessarily gone into the aspects which are not germane. It is being shown that plaintiff is having possession over aforesaid property. He submits that purported/contended delivery of possession, a circumstance alone, would not have any significance since it is apparent from record that the plaintiff-respondent No.1 cannot stake any claim on suit property. He, therefore, submits that grant of injunction in favour of plaintiff is not legal and proper and is unwarranted and such the order is untenable.

8. Countering aforesaid submissions, Mr. Syed, learned counsel appearing for respondent No.1 submits that at this stage of interlocutory application for interim relief, prima-facie

case balance of convenience and irreparable loss has been properly adjudged by the court and no interference is required in the findings in favour of plaintiff-respondent No.1 about his possession over the suit property. He submits that the contention of the petitioners at this stage has no semblance right and would be too premature and cannot be considered without facing trial in suit. He submits that the documents which have been sought to be relied on, may not be the documents which can be said to give title to the defendants over the suit property. He submits that upon death of Farjad Ali, plaintiff has succeeded to property as his son, and as such, he has all rights to the suit property and accordingly, having regard to aforesaid, no wrong can be said to have been committed in handing over possession of CTS No. 4245/A1 to respondent No.1 by the municipal authorities. He submits that there are lot of questions which will have to be decided and having regard to law, at this interlocutory stage, it cannot be said at all that the plaintiff-respondent No.1 has no right to the suit property.

9. Learned counsel Mr. Syed goes on to submit that it is an undisputed position, which emerges on record that the plaintiff-respondent No.1 is in fact in possession of the suit

property. Its legality or otherwise would emerge only after adjudication of rights and not before. When plaintiff-respondent No.1 is in possession of the suit property, meddling with the same by defendants is required to be contained. The appellate court has rightly judged upon the factual position that all the ingredients required for injunction are in favour of plaintiff-respondent No.1.

10. After going through the orders passed by the courts below and upon hearing the parties, the position emerges that as on the date, there does not appear to be a dispute with regard to that the suit property referred to above i.e. CTS No.4245/1A is in possession of plaintiff-respondent No.1 and further that present defendants have claimed back the possession. The appellate court while reversing the order of trial court on Exhibit-5 has given reasons in the judgment and order impugned in this writ petition, more particularly, in paragraph No.18 therein. Under the circumstances, I do not see that this is a matter good enough to interfere with the aforesaid position.

11. As such, writ petition is not being entertained and stands rejected. Rule is discharged.

12. However, having regard to the relationship between the parties, particularly plaintiff and defendants No. 1 to 3, suit be proceeded with as expeditiously as possible and be disposed of preferably within a period of nine months from the date of receipt of writ of this order.

13. It is further made clear that the observations hereinabove are made for the purpose of rejection of this writ petition and would not have efficacy in any other proceedings and the suit be decided un-influenced by aforesaid observations. It would further be taken into account that the observations in the order passed in miscellaneous civil appeal also are at the stage which was interlocutory.

(SUNIL P. DESHMUKH, J.)

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