

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition NO. 10008 OF 2015

Shri. Ravindra Ganpati Kempwade
And Anr.

...Petitioners

Versus

Shri. Namdeo Dnyanoba Bhosale

...Respondent

....

Mr. Umesh Mankapure a/w. Akshay P. Shinde, Advocate for the
Petitioners.

Mr. Anilkumar Patil i/b. Sachin K. Hande, Advocate for the
Respondent.

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CORAM : R. G. KETKAR, J.

DATE : 22nd APRIL, 2016

P.C.

1. Heard Mr. Umesh Mankapure, learned Counsel for the
petitioners and Mr. Anilkumar Patil, learned Counsel for the
respondent, at length.

2. Rule. Mr. Patil waives service on behalf of the
respondent. At the request and by consent of the parties, Rule
is made returnable forthwith and Petition is taken up for final
hearing.

3. By this Petition under Article 227 of the Constitution of
India, the petitioners have challenged the judgment and order

dated 1.8.2015 passed by learned 4th Jt. Civil Judge, Junior Division, Sangli below Exhibit-5 in R.C.S. No.1102/2012 as also the judgment and order dated 16.9.2015 passed by the learned District Judge-5, Sangli in Misc. Civil Appeal No.120/2015. By these orders, the Courts below allowed the application Exhibit-5 made by the respondent, hereinafter referred to as 'plaintiff', and issued injunction restraining the petitioners, hereinafter referred to as the 'defendants', from obstructing the peaceful possession of the plaintiff over plots No.3 and 4 admeasuring 371.74 sq. mtrs. equivalent to 4000 sq. ft. out of Survey No.436, Hissa No.1-A/2 admeasuring 81 Ares (for short, 'suit property').

4. The plaintiff has instituted the suit against the defendants for perpetual injunction restraining the defendants from causing obstruction to the plaintiff's possession over the suit property. Mr. Mankapure submitted that the plaintiff is claiming possession on the suit property on the strength of sale receipt dated 19.11.2011 executed by one Dashrath Mangle in favour of the plaintiff. Sale receipt recites that Mangale has purchased 12 Ares out of eastern portion out of Survey No.436, Hissa No.1-A/2 from one Jems Dinkar Fansopkar. The land was

converted into non-agricultural land and lay out was prepared. The plaintiff agreed to purchase the suit property for a total consideration of Rs.2 Lacs. He submitted that the said document is executed on Rs.100/- stamp paper. It is neither adequately stamped nor is registered more so when there is recital that the plaintiff is claiming to have been put in possession in pursuance of the sale receipt. He submitted that village form No.7 records that Dashrath Mangle is in possession plots No.28 to 32 admeasuring 838.06 sq. mtrs. equivalent to 0.08.38 Ares. In other words, said Mangale is not in possession of said plots No.3 and 4.

5. As against this, the defendants have purchased 44 Ares out of 81 Ares of Survey No.436/1-A/2 by registered sale deed dated 5.5.2011. He submitted that originally Mahajans were owner of survey No.436/1A/2. On 5.10.1991 Mahajans sold 6 Ares to Rajgonda Dada Patil and 6 Ares to Ramchandra Mohite on 5.10.1991. On 8.3.1996, Rajgonda Patil and Ramchandra Mohite sold 10 Ares to Jems Fansopkar. On 30.10.1999 Jems Fansopkar in turn sold 12 Ares to Dashrath Mangle. Dashrath Mangle agreed to sell 12 Ares land to

defendants on 20.12.2010. The defendants were of the view that Dashrath Mangle had no title and, therefore, the transaction was cancelled on 19.11.2011. On the same day Dashrath Mangle executed sale receipt in favour of the plaintiff and on the strength of said receipt the plaintiff claims to be in possession of plots No.3 and 4. He submitted that basically the sale receipt dated 19.11.2011 itself is not admissible in evidence even for collateral purpose. In support of this submission he relied upon the decision of the Apex Court in the case of ***Avinash Kumar Chauhan vs. Vijay Krishna Mishra, (2009) 2 SCC 532***, and in particular paragraphs-17, 23 to 29. He submitted that the Apex Court has specifically held that the language of section 35 the document which is not adequately stamped cannot be used for any purpose whatsoever which will also include collateral purpose. As against this, in paragraph-16, learned District Judge relying upon the decision of this Court in the case of ***Sanjay S/O Shrikishanji Somani vs. Vishnupant S/O Shankarrao, 2007(6) Mh.L.J. 550*** held that the power of impounding the document cannot be exercised at the stage of consideration of the application for temporary injunction. In paragraph-17, learned District Judge observed

that the agreement executed by Dashrath Mangle in favour of the plaintiff cannot be read for collateral purpose so far as determination of *prima facie* case at the juncture of consideration of temporary injunction application.

6. As against this, Mr. Patil supported the impugned orders. He submitted that the defendants have relied upon the cancellation deed dated 19.11.2011. In paragraph-3 of the deed, the defendants admitted that Dashrath Mangle is in possession of the suit property. In other words he submitted that the defendants having admitted the possession of the suit property of Dashrath Mangle and the plaintiff having agreed to purchase the suit property from Dashrath Mangle, the Courts below rightly came to the conclusion that the plaintiff is in possession of the suit property. That apart, defendant No.1 is the attesting witness to the sale receipt executed by Mangle in favour of the plaintiff. He, therefore, submitted that no case is made out for invocation of powers under Article 227 of the Constitution of India.

7. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused

the material on record. It is not in dispute that the plaintiff has instituted the suit for perpetual injunction on the basis of the sale receipt executed by Dashrath Mangle in his favour. Perusal of the sale receipt *prima facie* shows that Dashrath Mangle agreed to sale the suit property to the plaintiff for total consideration of Rs.2 Lacs. Perusal of paragraph-4 of this document *prima facie* shows that Dashrath Mangle handed over actual and physical possession of the suit property to the plaintiff. Section 34 of the Maharashtra Stamp Act, to the extent is relevant for deciding the controversy between the parties, reads thus :

“34. Instruments not duly stamped inadmissible in evidence, etc.- No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer unless such instrument is duly stamped [or if the instrument is written on a sheet of paper with impressed stamp—[such stamp paper is purchased in the name of one of the parties to the instrument]:”

8. In the case of Avinash Chauhan (supra), Apex Court was considering the provisions of the Stamp Act, 1899. Section 35 of that Act is para materia with Section 34 of the

Maharashtra Stamp Act. The Apex Court held that an instrument which is not adequately stamped cannot be used for any purposes whatsoever which will also include collateral purpose. In view thereof, *prima facie* the Courts below were not justified in issuing injunction on the basis of the sale receipt dated 19.11.2011. The Courts below have not considered this aspect. Apart from that, the contention of the defendants that Dashrath Mangale was in possession of plot Nos.28 to 32 and not in possession of suit property, as is evident from village form No.7, is also required to be gone into. In view thereof, the impugned orders are liable to be set aside thereby restoring application Exhibit-5, for *denovo* consideration. Learned trial Judge will consider the contentions recorded herein and also all other contentions that are available to the parties and pass appropriate order. Parties are at liberty to produce the documents if permissible in law. Rule is made absolute in aforesaid terms with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)