

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2321 OF 2016

Babu Hasan Mujawar ... Petitioner
Vs.
Laxmi Narayan Dongare and others ... Respondents

Mr. Umesh R. Mankapure for Petitioner.
Mr. Wasim N. Samlewale for Respondent No.5.

CORAM : R. G. KETKAR, J.
DATE : APRIL 18, 2016

P.C. :

Heard Mr. Mankapure, learned Counsel for petitioner and Mr. Samlewale, learned Counsel for respondent No.5 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 13.01.2016 passed by the learned Ad-hoc District Judge-1, Sangli in Miscellaneous Civil Appeal No.4 of 2015. By that order, the learned trial Judge allowed the Appeal preferred by original defendant No.5 and quashed and set aside the judgment and order dated 19.12.2014 passed by the learned 5th Joint Civil Judge, Senior Division, Sangli below exhibit-5 in Regular Civil Suit No.56 of 2013. The learned District Judge dismissed the application exhibit-5 filed by the petitioner, hereinafter referred to as plaintiff.

3. Plaintiff has instituted Suit against respondents, hereinafter referred to as defendants, inter alia praying for - (i) specific performance of agreement of sale dated 02.06.1999 executed by Narayan Baban Dongare- predecessor in title of defendants No.1 to 4 in favour of the

plaintiff; (ii) for perpetual injunction restraining the defendants from causing obstruction to the plaintiff's possession over 8 Anna share out of Gat No.31/A/1 in all admeasuring 3 Hectares 18 Ares situate at Miraj, District Sangli (for short 'suit land'); and (iii) for cancellation of Sale Deed dated 14.12.2012 executed in favour of defendant No.5.

4. During the pendency of the Suit, plaintiff took out application exhibit-5, which was allowed by the trial Court. Defendant No.5 preferred Appeal, which was allowed by the District Court. It is against this order, plaintiff has instituted the present Petition.

5. In support of this Petition, Mr. Mankapure submitted that perusal of the agreement for sale dated 02.06.1999 clearly shows that plaintiff had purchased 8 Anna share out of the suit land. The total consideration was fixed at Rs.1.20 lacs. Plaintiff paid entire consideration on the date of execution of the agreement of sale and was put in possession of the suit land. Since 02.06.1999, plaintiff is cultivating the suit land and taking crops. He also relied upon the document styled as "Sammatipatra" dated 24.03.2013 executed by defendant No.1-Laxmi Narayan Dongare in favour of the plaintiff. In paragraph 2, it is stated that since 02.06.1999, plaintiff is in possession of the suit land and is taking sugar cane crop every year. He also invited my attention to the written statement dated 06.04.2013 filed by the defendant No.1 opposing the Suit filed by the plaintiff. He submitted that the very fact that the defendant No.1 is opposing the claim of the plaintiff and despite that, she had executed "Sammatipatra" shows that since 02.06.1999, plaintiff is in possession of the suit land and that the Sale Deed dated 14.12.2012 is not acted upon. He submitted that the learned trial Judge considered the 'Sammatipatra' and came to the conclusion that the plaintiff is in possession and accordingly issue injunction. As against

this, the learned District Judge interfered with the discretionary order passed by the learned trial Judge. He, therefore, submitted that the Petition requires consideration.

6. On the other hand, Mr. Samlewale supported the impugned order.

7. I have considered the submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. Plaintiff has instituted Suit in or about January 2013 for specific performance of agreement of sale dated 02.06.1999. Even before institution of the Suit, Sale Deed was executed in favour of the defendant No.5. The learned District Judge has observed in paragraph 9 that in pursuance of the sale deed, mutation entry No.50409 was made on 30.10.2013. The mutation entry supports possession of defendant No.5. As far as consent deed dated 24.03.2013 is concerned, the learned District Judge observed that the said document bears only the signature of defendant No.1 Laxmi Dongare and it was not signed by other legal heirs of Narayan Dongare. That apart, once the Sale Deed was executed in favour of defendant No.5 on 14.12.2012, in my opinion, defendants No.1 to 4 were divested of her title and had no occasion to execute 'Sammatipatra' in favour of the plaintiff. The plaintiff ought to have instituted Suit for specific performance within a reasonable time. Plaintiff has however, instituted Suit only in the year 2013 for specific performance of contract dated 02.06.1999. The learned District Judge, after considering the material on record, came to the conclusion that plaintiff is not in possession and defendant No.5 is in possession of the suit land. In addition to this, perusal of the agreement of sale shows that Narayan agreed to sell 8 Anna share in Gat No.31/A/1 in all admeasuring 3 Hectares 18 Ares. No material is produced on record to indicate that the property was demarcated / divided after execution of

agreement of sale. In such state of affairs, it cannot be accepted that plaintiff is in possession of 8 Anna share in the undivided suit land. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Minal Parab