IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition (ST) NO. 8741 OF 2016

MS. ROSHANI SUKHRAJI BAFNA ...Petitioner
Versus
VIJAY H. SHAH ...Respondent

....

Ms. Roshani S. Bafna, Petitioner present in-person.
Ms. Yogita Deshmukh, Advocate for the Respondent.

....

CORAM : R. G. KETKAR, J.

DATE : 07th APRIL, 2016

P.C.

1. Not on board. At the request of Ms. Bafna, taken up in the production board, for admission.

2. Heard Ms. Roshni @ Sandhya Sukhraji Bafna, the petitioner in person and Ms. Yogita Deshmukh, learned Counsel for the respondent, at length.

3. By this Petition under Article 227 of the Constitution of India, the petitioner has prayed following reliefs:

> "A) Be pleased to invoke section 151 of C.P.C. to recall the order and judgment dt. 13.4.2004 passed by Dahanu Civil Court in RCC No.1/2004

as it is obtained by fraud on court and fraud on petitioner.

B) Be pleased to suspend the operation of section 55 of Land Revenue Code in view of guidelines issued by Hon'ble Supreme Court in case of Indar Singh Vs. Nihal Kaur and anr. AIR 1968 P H 495.

C) Be pleased to declare the petitioner a lawful owner and legal title in suit property situate at village Sarawli @ Manfod, Tal. Dahanu.

D) Dahanu court be directed to decide the prayers of petitioner for awarding manse profit and reconstruct of house property in RCC No.46/2015 pending before Civil court at Dahanu within 4 months in view of Art.14 of Constitution of India.

E) Petitioner be granted ad-interim relief in terms of prayer A to D.

F) Legal explanation from Ld. Magistrate Shri Vilas Khandbahale be sought for his corrupt practice of taking bribe from 5 advocates as alleged by President of Bar Association at Dahanu in view of C.D.

G) Any other relief be granted to the petitioner to meet the ends of justice."

4. Ms. Bafna strenuously contended that the petitioner has right, title and interest in respect of the properties which were the subject matter of R.C.S. No.1/2004. These properties were gifted and bequeathed by her mother from her *stridhan* to the petitioner-plaintiff and are owned and possessed by the petitioner since 1985. The defendants and petitioner's uncle

Chandraj Bothra conspired with each other and by adopting corrupt practice obtained 7/12 extract of the suit properties. The defendants and others on the basis of bogus 7/12 extracts obtained favourable decree on 13.4.2004 in R.C.S. No.1/2004 by misleading the Court. She further submitted that because of the mistake committed by the Court, the petitioner should not suffer. Her sole livelihood has been deceitfully snatched by the defendants which is prejudicial to human rights of the petitioner. She has taken me through the synopsis of this petition.

5. Ms. Bafna relied upon the decision of Apex Court in the case of ***Indian Bank vs. M/s. Satyam Fibres (India) Pvt. Ltd., AIR 1996 SC 2592*** to contend that under Section 151 of CPC, the Court has power to recall its judgment and order if it is obtained by fraud on the Court or if the Court is misled by the parties or the Court itself commits a mistake which prejudices a party.

6. On the other hand Ms. Deshmukh invited my attention to the prayers made in R.C.S. No.46/2015 instituted by the petitioner in the Court of Civil Judge, Junior Division, Dahanu

praying *inter alia* for following reliefs :

> "1. Be pleased to set aside the order dt. 13.4.2004 in R.C.S. No.1/2004 obtained by fraud on court and be pleased to restore the suit property of plaintiff herein as she is the absolute & sole owner of said suit property & be pleased to declare Plaintiff as a Owner.
>
> 2. Be pleased to direct defendants to compensate the plaintiff in terms of means Profit for last 11 years from said suit property whichever this Hon'ble court may deem fit & proper in the interest of justice.
>
> 3. Be pleased to award ad-interim relief in terms of prayer no.1 & 2, to plaintiff herein.
>
> 4. Any other relief may be granted which is in the interest of justice."

7. Ms. Deshmukh submitted that the petition is wholly misconceived. She invited my attention to the affidavit of Mr. Vijay H. Shah. It is contended therein that the petitioner had filed Misc. Application No.19/2004 for recalling the judgment and decree dated 13.4.2004 passed in R.C.S. NO.1/2004. That application was withdrawn by the petitioner unconditionally and without taking any liberty to file any fresh application. Learned trial Judge disposed of the application for want of prosecution. The petitioner thereafter instituted R.C.S. No.19/2014 on 10.2.2014 challenging the judgment and decree dated 13.4.2004

passed in R.C.S. No.1/2004. The respondents filed application under Order 7 Rule 11 of CPC for rejecting the plaint. By order dated 3.5.2014, learned trial Judge rejected the plaint. The petitioner has not challenged said decision till date. Present suit, namely, R.C.S. No.46/2015 is instituted on 12.2.2015 challenging the judgment and decree dated 13.4.2004 passed in R.C.S. No.1/2004. She therefore submitted that the petition is liable to be dismissed.

8. I have considered the rival submissions advanced by the parties. I have also perused the material on record. As the prayer clauses (A) and (C) in the present petition are already claimed in Regular Civil Suit No.46/2015, said prayers cannot be considered in the Writ Petition. By prayer clause (B), the petitioner has sought suspension of Section 55 of the Maharashtra Land Revenue Code, 1966 in view of the guidelines issued by Punjab and Haryana High Court in the case of ***Indar Singh Vs. Nihal Kaur***, ***AIR 1968 PH 495.*** Said prayer cannot be considered by Single Judge exercising powers and jurisdiction under Article 227 of the Constitution of India. By prayer clause (D), the petitioner has sought direction to Dahanu

Court for deciding prayer clause of awarding *mesne* profit and reconstruction of the house property in Regular Civil Suit No.46/2015 pending before the Dahanu Court within four months. The petitioner is at liberty to make prayer to that effect in the pending suit.

9. Ms. Bafna relied upon the decision of ***Indian Bank*** (supra). There is no dispute with the proposition laid down therein. The moot question is whether prayers made in the petition can be granted when the substantive suit instituted by the petitioner is pending. After considering the prayers made in the petition and the prayers made in the suit, I am clearly of the opinion that the petition is wholly misconceived and as such is liable to be dismissed. Hence, Petition is dismissed in limine.

(R. G. KETKAR, J.)

Deshmane (PS)