

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9503 OF 2004

Shri Tulshiram Asaram Tarode,
since deceased through his
heirs and legal representatives
Smt. Rekha Tulshiram Tarode & Ors. ..Petitioners

VS.

The President / Secretary,
Navin Pawana Nagar Vasahat
Sahakari Graha Rachana Sanstha & Ors. ..Respondents

Mr. G. H. Keluskar for Petitioners.
None for Respondents.

CORAM : M. S. SONAK, J.
DATE: 22 NOVEMBER 2016

P.C :

1] Heard Mr. G. H. Keluskar, learned counsel for the petitioners.
Neither the respondents nor their Advocates are present, though
they have been duly served.

2] Since, the matter relates to the year 2004 and has been
adjourned on several previous occasions, it is not possible to further
adjourn the matter. Although, the original petitioner Tulshiram
Tarode has expired and is now represented by his legal
representatives, for sake of convenience, reference is made to the
original petitioner.

3] The challenge in this petition is to the judgment and order dated 8 October 2004 made by the Maharashtra State Cooperative Appellate Court (Appeal Court) allowing the respondent no. 3's appeal against the judgment and order dated 12 December 1996 made by the Cooperative Court in the dispute raised by the petitioner herein.

4] This Court, on 28 November 2005, whilst issuing Rule, made the following order :

“ Rule.

2. Admittedly, the parties are the joint owners of the plot of land. There is no partition of the said property. However, at the time of carrying out construction of the bungalow, plans were submitted indicating construction of the building by both the parties in a particular area of the plot. The said plan admittedly does not divide the property equally between the parties. The portion of the land which is in the possession of the respondent has no access and, therefore, an access has been taken from the plot of land belonging to the petitioner herein. It is now well settled that till and until there is partition of the property each of the parties are entitled to each and every part of the said plot of land. In that view of the matter, there will be an interim order in terms of prayer clauses (c) and (d). The petitioner is also directed not to encumber, alienate or create any third party right in respect of part of land which is in his possession.

3. An attempt was made to get the matter worked out by

working out the compensation by the respondent towards holding of larger portion of the plot of land on the basis of equal share in respect of the said property. However, respondent is not inclined to settle the said dispute. In that view of the matter, the petition is required to be decided finally. Hence, Rule and interim order as aforesaid. No order as to costs."

5] Mr. Keluskar, learned counsel for the petitioners however now submits that the main controversy between the parties is not in relation to access but rather, main dispute relates to the entitlement of the petitioners to equal rights in plot no. 94, survey no. 2, Chinchwad - Pune (suit plot), in respect of which, the petitioner has leasehold rights in terms of allotment made by Navin Pawana Nagar Vasahat Sahakari Graha Rachana Sanstha (society) way back on 7 April 1983. Mr. Keluskar submits that in breach of the rights and entitlement of the petitioner, the respondents have purported to create rights, particularly in respondent no. 3, which rights, purport to relate to more than half of the rights in the suit plot. Mr. Keluskar submits that in case it is clarified and declared that the petitioner has rights in the suit plot to the extent of fifty percent, in terms of the allotment dated 7 April 1983, then, the petitioner would be satisfied and not pursue the relief of setting aside allotments in favour of the respondent no.3 in its entirety. Accordingly, the impugned judgment and order as well as the entire matter is now

examined in the light of said submission now made by Mr. Keluskar, learned counsel for the petitioners.

6] The suit plot admeasures 6531.25 sq. ft., which corresponds to 606 sq. mts. Initially, the suit plot was allotted by the society to the husband of the respondent no. 2. However, husband of the respondent no. 2 by surrender deed dated 7 April 1983, surrendered rights in the suit plot to the society. Thereafter, the society vide lease deed dated 7 April 1983 allotted leasehold rights in the suit plot to the petitioner and the respondent no. 2. Although, surrender deed and the indenture of lease both dated 7 April 1983 make no specific reference to the allotment to the two parties being to the extent of 50% each, from the context, it is quite clear that the society allotted the leasehold rights to the petitioner and the respondent no. 2, so that, the two parties would hold the same in equal measure. These deeds specifically refer to the area of the suit plot as 606 sq. meters.

7] Thereafter, vide deed of surrender dated 16 September 1985, the respondent no. 2 surrendered her leasehold rights in the suit plot to the society. On the same day, i.e. on 16 September 1985, the society allotted leasehold rights, surrendered by the respondent no. 2, in favour of the respondent no. 3. In these two documents dated

16 September 1985 however it is mentioned that the respondent no. 2 has surrendered an area of 4000 sq. ft. or 372 sq. meters (approximate) in favour of the society and the society, in turn, has allotted in favour of respondent no. 3 such surrendered area, again corresponding to 4000 sq. ft. or 372 sq. meters (approximate). Admittedly, the petitioner is not a party to the said two deeds dated 16 September 1985.

8] As of now, both the petitioner as well as the predecessor in title of the respondent no. 3 have constructed structures upon the suit plot. There was some issue with regard to access as between the petitioner and the respondent no. 3. However, Mr. Keluskar, learned counsel for the petitioner now points out that access is not the real issue but the main grievance of the petitioner is to the purported allotment of 372 sq. meters portion of the suit plot in favour of the respondent no. 3. Mr. Keluskar submits that admittedly, the petitioner and the respondent no. 2 were joint lessees in respect of the suit plot. There is no partition of the suit plot. The earlier documents clearly indicate that the petitioner and the respondent no. 2 were joint lessees having equal rights in respect of the suit plot. In these circumstances, Mr. Keluskar submits that there was no question of respondent no. 2 purporting to surrender the area in excess of half of the suit plot to the society

and the society purporting to allot such area to the respondent no.3.

9] Upon perusal of the material on record, there appears to be merit in the contention of Mr. Keluskar. The documents on record clearly indicate that the petitioner and the respondent no. 2 had equal rights in so far as the suit plot is concerned. Since, the suit plot was never partitioned, in theory, both the parties are co-lessees in respect of the suit plot. However, considering that both the parties had equal rights, if at all, such rights have to be quantified then, both the parties would have rights to the extent of 303 sq. meters each.

10] In the aforesaid circumstances, there was no question of the respondent no.2 purporting to surrender to the society area of 4000 sq. ft. or 372 sq. meters and the society then purporting to allot in favour of the respondent no.3 the area of 4000 sq. ft. or 372 sq. meters. It is settled principle in law that no party can convey a title better than the one which he or she possesses. Therefore, the surrender, made by the respondent no.2 to the society can be restricted, only to the area of 303 sq. meters at the highest. Consequently, allotment by the society in favour of respondent no. 3 also be to the extent of only 303 sq. meters and not any area or right in excess of the same. The petitioner, is accordingly entitled to

a declaration in this regard. It is just and proper that it is declared that the petitioner and the respondent no. 3 are co-lessees in respect of the suit plot, each having equal rights. To this extent, the statement in the deeds dated 16 September 1985 that an area of 372 sq. meters was surrendered or that an area of 372 sq. meters was allotted to the respondent no. 3, will not bind the petitioner. It is declared that the two documents have to be construed so as to restrict the allotment to the respondent no. 3 only to the extent of 303 sq. meters or correctly, the two documents have to be construed as conferring equal rights upon the petitioner and the respondent no. 3 in respect of the suit plot as co-lessees. The impugned judgment and order is therefore modified to this extent.

11] Rule is accordingly made partly absolute. There shall be no order as to costs.

12] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)

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