

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

***CIVIL APPLICATION NO. 2390 OF 2016
IN and ALONG WITH
WRIT PETITION NO. 8808 OF 2016***

Guranna Shrimant Danure,
R/at Nagur, Tal. Akkalkot, Dist.Solapur. ... Applicant/
Petitioner

v/s

Revansiddha Aandappa Munoli,
R/o Nagur, Tal.Akkalkot, Dist.Solapur. ... Respondent

Mr.Drupad Patil for the applicant/petitioner.

Mr.Yuvraj Narvankar for the respondent.

Coram: N.M. Jamdar, J.

Dated: 7 SEPTEMBER 2016

ORAL ORDER:

In view of the unconditional apology tendered by the learned counsel for the Applicant, the application is allowed in terms of prayer clauses (a) and (b).

2 The petition is taken up for consideration forthwith.

3 The petition challenges the judgment and order passed by the

learned District Judge, Solapur, dated 16 June 2016, allowing the miscellaneous civil appeal filed by the Respondent/Plaintiff and restraining the Petitioner/Defendant from disturbing the possession and cultivation of the Respondent/Plaintiff over the suit property till the disposal of the suit.

4 Heard learned counsel for the parties.

5 The learned counsel for the Petitioner submitted that the trial Court Judge had given cogent reason for not granting any relief to the Respondent/Plaintiff and has assessed the evidence on record *prima facie* correctly, and the learned District Judge committed an error in reversing the finding of the learned Civil Judge granting an injunction. He submitted that the Respondent/Plaintiff had sold 0.81 Ares of the land to one Shri Togare, which fact was suppressed from the Court and therefore the Respondent/Plaintiff was not entitled to any equitable relief. Learned counsel relied upon the decision of the Apex Court in the case of *Mandali Ranganna & ors. v/s T.Ramchandra & ors.*¹ He submitted that the affidavit of Shri Togare was rightly discarded by the learned Civil Judge. I have considered these submissions. The District Court has dealt with this aspect of the matter. The learned District Judge opined that no purchaser would file an affidavit contrary his interest that possession is not handed over and at *prima facie* stage an affidavit could not have

1 (2008) 11 SCC 1

been discarded by the learned Civil Judge. The learned counsel for the Respondent has pointed out that the said deed was executed after filing of the suit and, therefore, there could not be any suppression of facts. He also submitted that the property also stood re-conveyanced after repayment of the loan. In view of this position, the learned Civil Judge was heavily influenced by the so called suppression by the Respondent/Plaintiff, which was not warranted in the facts of the case.

6 Learned counsel for the Petitioner then submitted that the receipts and documents, which the Respondent/Plaintiff seeks to rely on, are not material as they do not refer to the suit property. He submitted that the learned District Judge has committed factual error in holding that the receipts pertain to the village where the suit land is situated. This submission has also no merit. The learned District Judge has considered the receipts and has found some of them referred to Village Ibrampur, whereas the suit property is situated at Nagur, but considered the position that the parties are resident of village Nagur and the land is situated at Ibrampur, therefore, there could be some error in mentioning the place. This is a possible view to be taken.

7 Learned counsel for the Respondent/Plaintiff submitted that the Respondent/Plaintiff purchased the property by way of registered sale deed which contains a recital that the possession is handed over

to the Respondent/Plaintiff. He submitted that the revenue entries have also been made pursuant to the said sale deed, and the revenue entries have not been challenged. There is nothing contrary stated by the learned counsel for the Petitioner.

8 Therefore, the situation that arises is that, the Respondent/Plaintiff has placed on record the sale deed in his favour which contains a recital that they are in possession, the receipts of sale of sugarcane have been placed on record. The receipts though pertain to two different villages, the explanation is given by the learned District Judge. The revenue entries refer physical possession of the Respondent/Plaintiff. As against this, the Petitioner has produced only affidavits of neighbours. The Petitioner has not produced any documentary evidence in support of his contention that he has been cultivating the suit land for many years. The learned District Judge has, therefore, considered the evidence adduced by both parties and has *prima facie* found that the evidence produced by the Respondent/Plaintiff is more cogent. It is not possible to interfere in this assessment of evidence by the learned District Judge in limited jurisdiction available under Article 227 of the Constitution of India.

9 In the circumstances, no interference is warranted in the impugned order. The writ petition is accordingly rejected.

10 All contentions of the parties on merits of the suit, are kept

open.

11 It is clarified that the observations made in both the orders as well as this order, are *prima facie* and the suit will have to be decided on its own merits.

(N. M. Jamdar, J.)