

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10926 OF 2015

Suresh Shankar Patil ... Petitioner
Vs.
Nilesh Kamlakar Patil and others ... Respondents

Mr. Vijay Patil i/b. Mr. Satyajeet H. Joshi for Petitioner.
Mr. Nishigandh N. Patil for Respondents No.1 and 2.
Mr. R. S. Apte, Senior Advocate a/w. Mr. Sandeep Mahadik i/b. Mr. Vijay S. Gharat for Respondents No.2, 4A, 4B, 4C(i) to 4C(iv).
Ms Sheela G. Sanap h/f. Mr. S. K. Shinde i/b. Mr. Amol S. Suryawanshi for Respondents No.5H to 5J, 6 to 16, 19 to 25 and 27 to 32.
Mr. Sanjay S. Patil for Respondent No.17.
Mr. S. D. Rayrikar, AGP for Respondent No.33-State.

CORAM : R. G. KETKAR, J.
DATE : APRIL 13, 2016

P.C. :

Heard Mr. Vijay Patil, learned Counsel for Petitioner, Mr. Nishigandh N. Patil, learned Counsel for respondents No.1 and 2, Mr. Apte, learned Senior Counsel for respondents No.2, 4A, 4B, 4C(i) to 4C(iv), Ms Sanap, learned Counsel for respondents No.5H to 5J, 6 to 16, 19 to 25 and 27 to 32, Mr. Sanjay S. Patil, learned Counsel for respondent No.17, and Mr. Rayrikar, learned AGP for respondent No.33-State. Notice to rest of the respondents is dispensed with as respondents No.1 and 2 are the contesting respondents being the plaintiffs. Rule. Learned Counsel for respective respondents waive service. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, original defendant No.1 has challenged the judgment and order dated 19.01.2015 passed by the learned Joint Civil Judge, Junior Division, Thane below exhibit-5 in Regular Civil Suit No.448 of 2014 as also the judgment and order dated 15.07.2015 passed by the learned District

Judge-11, Thane in Miscellaneous Civil Appeal No.64 of 2015 by which the Courts below issued injunction restraining the defendants No.1, 2, 3, 11, 12, 15, 16, 18, 20, 23 and 24 from creating third party interest in the suit properties mentioned in the plaint except properties bearing Survey No.34, Hissa No.1, Survey No.34, Hissa No.2 and Survey No.34, Hissa No.3.

3. By order dated 16.11.2015, the proposal given by the petitioner for resolving the entire controversy was recorded and the notice was issued to respondents No.1 and 2 for final disposal of the Petition. The matter was thereafter adjourned from time to time for exploring the possibility of a settlement. However, the learned Counsel appearing for the parties reported that settlement is not possible. In view thereof, on 28.03.2016, matter was heard at length and submissions advanced by the parties were recorded. On behalf of the petitioner, it was contended that by registered Release Deed dated 21.02.2007, respondents No.1 and 2 - plaintiffs had relinquished their right, title and interest in favour of defendants No.1 to 3. Mr. Patil invited my attention to the Release Deed and in particular to internal page 15/47 to contend that plaintiff No.1's name is shown at serial No.2/1/3. Name of plaintiff No.2 is shown at serial No.2/1/5. However, it is not signed by the plaintiffs. As far as page No.40/47 is concerned, it does not bear photographs as also signatures of the plaintiffs. However, at page No.46/47, photographs of plaintiffs as also their thumb impressions and signatures appear. Plaintiffs did not dispute their photographs. Mr. Patil also invited my attention to paragraphs 7 and 8 of the written statement and say to exhibit-5 filed by defendant No.1.

4. As against this, Mr. Nishigandh Patil appearing for plaintiffs invited my attention to the Release Deed and in particular page 15/47 to contend that though names of plaintiffs No.1 and 2 are mentioned, the

said page does not bear their signatures. He also invited my attention to page 40/47 to contend that the plaintiffs' photographs and signatures as also thumb impressions do not appear on that page . It is the case of the plaintiffs that the Release Deed does not bear their signatures and they were not present before the Office of the Sub-Registrar, Thane. Someone else made their signatures. In other words, it is the case of cheating by personation.

5. In view of these submissions, the Register from the office of the Sub-Registrar Thane No.5 in respect of the Release Deed running into pages 1 to 47 registered at serial No.1430 on 21.02.2007 was called for. In pursuance of that order, Mr. Pradip U. Kadale, Senior Clerk attached to the office of Sub-Registrar, Thane appeared on 12.04.2016. The petitioner was directed to implead State Government as a formal party. Mr. Rayrikar accepted service on behalf of the newly added respondent-State.

6. Mr. Rayrikar invited my attention to page 46/47 of the Release Deed and submitted that plaintiffs were were not present initially at 1:43:26 p.m. and were present at 3:48:46 p.m. He has placed on record communication dated 11.04.2016 addressed by In-charge Joint Sub-Registrar, Thane No.5 to the Government Pleader, which is taken on record and marked 'X' for identification.

7. Mr. Vijay Patil submitted that petitioner will rely upon the communication dated 11.04.2016 before the learned trial Judge. Mr. Nishigandh Patil consents for setting aside the impugned order and submits that plaintiffs will make appropriate submissions in respect of this communication before the trial Court. As this development took place pending the Petition, I find it necessary to give opportunity to both the sides to make submissions on this point and the learned trial Judge

will consider the effect of communication dated 11.04.2016.

8. In view thereof, by consent of the petitioner and respondents No.1 and 2, the impugned judgment and order dated 19.01.2015 passed by the learned trial Judge as also the judgment and order dated 15.07.2015 passed by the learned District Judge are set aside and application made by respondents No.1 and 2 at exhibit-5 is restored to the file of the trial Court. Parties agree to appear before the trial Court on 25.04.2016 and for that purpose, no fresh notice be issued to them and the learned trial Judge is requested to decide application exhibit-5 *de novo* within eight weeks from the date of appearance of the parties. All contentions of the parties on merits are expressly kept open. During the pendency of this Application, the order below exhibit-5 shall be treated as ad-interim order and shall remain in force. It is made clear that by continuing ad-interim order, this Court has not expressed any opinion of merits of the case either way. Rule is made absolute accordingly with no order as to cost.

(R. G. KETKAR, J.)

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