

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12332 OF 2016

Arvind Vishwanath Digge ... Petitioner
Vs.
Pradeep Suresh Digge and others ... Respondents

Mr. Abhijit P. Kulkarni for Petitioner.
Mr. Ashok B. Tajane for Respondents No.1 to 3.
Mr. Manoj M. Badgujar for Respondents No.4 and 6 to 9.

CORAM : R. G. KETKAR, J.
DATE : DECEMBER 19, 2016

P.C. :

Heard Mr. Kulkarni, learned Counsel for petitioner, Mr. Tajane, learned Counsel for respondents No.1 to 3 and Mr. Badgujar, learned Counsel for respondents No.4 and 6 to 9 at length. Mr. Kulkarni seeks leave to delete respondent No.5 on the ground that respondent No.5 has supported the petitioner in the trial Court. On the oral application made by Mr. Kulkarni, leave to delete respondent No.5 is granted. Amendment shall be carried out forthwith. Rule. Learned Counsel for respective respondents waive service. In view of the narrow controversy raised in this Petition as also 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, petitioner, hereinafter referred to as 'plaintiff', has challenged the judgment and order dated 16.09.2016 passed by the learned District Judge-3, Solapur in Miscellaneous Civil Appeal No.90 of 2016. By that order, the learned District Judge allowed the appeal preferred by defendants No.1 to 3 and quashed and set aside the judgment and order dated 01.07.2016 passed by the learned trial Judge below exhibit-5 in

Regular Civil Suit No.87 of 2015. The learned District Judge dismissed the application exhibit-5.

3. Plaintiff has instituted Suit inter alia praying for cancellation of the sale deed dated 10.10.2003 executed by defendant No.3 in favour of defendant No.1 minor through his guardian mother defendant No.2. Plaintiff has contended that his father – Vishwanath Mallikarjun Digge is the owner of land bearing Gat No.159/1B admeasuring 1 Hectare 60 Ares situate at Mauje Saphale, Taluka Akkalkot, District Solapur (for short 'suit property'). Vishwanath Digge died on 13.05.2006. Plaintiff has alleged that defendant No.3 had, on the basis of Power of Attorney dated 16.08.2001 allegedly given by plaintiff's father Vishwanath Digge, executed sale deed on 10.10.2003 in favour of defendant No.1 through his guardian mother, defendant No.2. Plaintiff has therefore, challenged the sale deed. During the pendency of the Suit, he took out application for injunction. By order dated 01.07.2016, the learned trial Judge allowed the application and issued injunction restraining defendants No.1 to 3 from causing obstruction and interference to the possession of the plaintiff over the suit property. Aggrieved by that decision, defendants No.1 to 3 preferred appeal, which is allowed. It is against this decision, plaintiff has instituted the present Petition.

4. In support of this Petition, Mr. Kulkarni submitted that plaintiff's father allegedly executed Power of Attorney in favour of defendant No.3 on 16.08.2001. The Registration Act, 1908 (for short 'Act') was amended by Act 48 of 2001, which came into force with effect from 24.09.2001. The Power of Attorney is registered on 24.10.2001. He invited my attention to Section 32-A of the Act to contend that every person presenting any document at the proper registration office under Section 32 has to affix his passport size photograph and finger-prints to

the document. In the present case, the alleged Power of Attorney bears alleged thumb impression of plaintiff's father Vishwanath and not his passport size photograph. He submitted that in view of Section 34 of the Maharashtra Stamp Act, the Power of Attorney, itself, was inadmissible. As the sale deed is executed on the strength of the Power of Attorney, the sale deed was also not admissible in evidence. The learned trial Judge allowed the application. As against this, the learned District Judge, in paragraph 14, observed that the submission made on behalf of the plaintiff that the Power of Attorney does not bear photograph of plaintiff's father - Vishwanath and is therefore, suspicious, cannot be accepted. The learned District Judge observed that while registering the instrument, it is the responsibility of the concerned Registrar to ensure whether the parties have fulfilled the requirements of registration laid down under the Act. If there are infirmities at the time of registration of Power of Attorney, plaintiff cannot take advantage of that fact and it cannot be said that the Power of Attorney is illegal at this stage. The learned District Judge thereafter referred to the decision of the Apex Court in the case of ***Suraj Lamps and Industries Private Limited Vs. State of Haryana*, (2012) 1 SCC 656**. After reproducing passage from that decision, the learned District Judge observed that the Power of Attorney records that suit property is handed over to the defendant No.3. In paragraph 15, the learned District Judge observed that whether the sale deed executed in favour of defendant No.1 in respect of 81 Ares is hit by the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, can be considered only at the stage of final hearing of the Suit. Mr. Kulkarni submitted that in view of Section 32-A of the Act, the learned District Judge should have considered admissibility or otherwise of the Power of Attorney as also the sale deed.

5. On the other hand Mr. Tajane supported the impugned order. He submitted that in paragraph 14, the learned District Judge has observed that at the time of registration of the Power of Attorney, prima facie, parties have fulfilled the requirements. The learned District Judge observed that while registering the instrument, it is the responsibility of the concerned Registrar to ensure whether the parties have fulfilled the requirements of registration laid down under the Act. Assuming that there were infirmities at the time of registering Power of Attorney in 2001, plaintiff cannot take advantage of the said fact.

6. After arguing the Petition for quite some time, Mr. Tajane submits that by consent, the impugned order may be set aside and the learned District Judge may be directed to dispose of the Appeal afresh. While deciding the Appeal, the learned District Judge will deal with all the contentions of the parties including those recorded in this order. Learned Counsel for the parties agree that they will appear before the District Court on 04.01.2017, and for that purpose, no fresh notice be issued to them.

7. In view thereof, by consent of the parties, impugned order dated 16.09.2016 is set aside and the appeal is restored to the file of the learned District Judge. The learned District Judge will consider the contentions based on Section 32-A of the Act and pass appropriate order. All contentions of the parties in that regard are expressly kept open. Parties will appear before the learned District Judge on 04.01.2017 and for that purpose, no fresh notice be issued to them. The learned District Judge is requested to decide the Appeal within 2 weeks from the production of the authenticated copy of this order. Mr. Tajane submitted that by order dated 01.07.2016, the learned District Judge issued notice to the respondents, returnable on 18.07.2016 and granted stay to the

injunction. The stay was continued pending the Appeal. In view thereof, the stay granted by the learned District Judge shall operate during the pendency of the Appeal. Rule is made absolute in the aforesaid terms with no order as to costs. Parties, including the District Court, to act upon the authenticated copy of this order.

(R. G. KETKAR, J.)

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