

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 11472 OF 2015

Narayan Atmaram Bhoir

And Ors.

...Petitioners

Versus

Bayer Crop Science Limited

And Anr.

...Respondents

....

Mr.Kishor S. Patil, Advocate for the Petitioners.

Mr.P.S. Dani, Senior Advocate a/w. Vishish Kalva i/b. Vidhi Partners, for Respondent No.2.

....

CORAM : R. G. KETKAR, J.

DATE : 19th DECEMBER, 2016

P.C.

1. Heard Mr.Patil, learned Counsel for the petitioners and Mr.P.S. Dani, learned Senior Counsel for respondent No.2, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as the 'plaintiffs' have challenged the judgment and order dated 6.12.2014 passed by the learned Jt. Civil Judge, Junior Division, Thane below

Exhibit-24 in R.C.S. No.776/2014 as also the judgment and order dated 12.10.2015 passed by the learned District Judge-2, Thane in Misc. Civil Appeal No.6/2015. By these orders, the Courts below dismissed the application Exhibit-24 taken out by the plaintiffs *inter alia* praying for injunction restraining the defendants from (a) disturbing their possession over the suit properties, (b) creating third party interest of whatsoever nature in the suit properties, (c) obtaining any sort of permissions, orders, certificates from the Governments and semi-governments, (d) carrying out any sort of activities over the suit properties and (e) obstructing the right of way/access of the plaintiffs leading to the suit properties in any manner whatsoever.

3. In support of this Petition, Mr. Patil strenuously contended that the Courts below have only considered the relief of injunction restraining the defendants from disturbing the possession of the plaintiffs. In short, he submitted that the Courts below have considered the injunction only in respect of clause (a) above and did not consider rest of the prayers (b) to (e).

4. The Courts below did not consider whether the plaintiffs have made out a case for issuing injunction restraining the defendants from (a) creating third party interest of whatsoever nature in the suit properties, (b) obtaining any sort of permissions, orders, certificates from the Governments and semi-governments, (c) carrying out any sort of activities over the suit properties and (d) obstructing the right of way/access of the plaintiffs leading to the suit properties in any manner whatsoever. He submitted that the Courts below ought to have granted injunction restraining the defendants from creating further interest. He submitted that defendant No.1 has committed third party interest in favour of defendant No.2 on 26.3.2014. It was, therefore, eminent case for issuing injunction against defendant No.2 from creating further third party interest.

5. On the other hand, Mr. Dani supported the impugned orders. He submitted that defendant No.1 had purchased the property from Raibai on 26.11.1962. Plaintiffs No.1 & 3, on their own showing, are employees of defendant No.1 company. In paragraph-9 of the plaint, the plaintiffs have averred that they acquired knowledge in the year 1977 of execution of the sale

deed of 1962 and the suit is instituted in the year 2014. That apart, the plaintiffs had instituted R.C.S. No.807/1989 for recovery of possession against defendant No.1 which itself shows that the plaintiffs are not in possession. That suit was dismissed in default and till date no steps are taken for restoration of the said suit. He further submitted that having regard to the conduct of the plaintiffs in approaching the Court belatedly, they are not entitled to any equitable relief.

6. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. The Courts below have recorded that on 10.10.1959 Dewoo Shinwar Bhoir expired. After his death, Raibai became the owner of the suit properties as his niece. Her name is mutated as per mutation entry No.1328 dated 23.11.1959. During the lifetime of the plaintiffs father Atmaram did not challenge said mutation entry. The learned trial Judge has recorded that the Collector, Thane gave permission on 15.10.1962 for selling the suit property. In pursuance thereof, Raibai sold the property to defendant No.1 by executing sale deed dated 26.11.1962. On the basis of that sale deed mutation entry No.1673 was certified on 12.1.1963. The Courts below also

noted that plaintiff No.1 had instituted R.C.S. No.807/1989 against defendant No.1 for possession. That suit was dismissed in default. The plaintiffs instituted the present suit for relief of declaration and injunction without claiming the relief of possession. After appreciating the material on record, the Courts below have held that defendant No.1 was in possession of the suit property as per the sale deed dated 26.11.1962. In particular, Appellate Court also referred to the decision of Apex Court in **Mandali Ranganna and ors. v. T. Ramachandra and others, (2008) 11 SCC 1** and observed that after the death of Dewoo, no steps were taken by Atmaram.

7. In the case of **Mandali** (supra) from paragraph-21 onwards, Apex Court has observed that while considering an application for grant of injunction, the Court will not only take into consideration the basic elements in relation thereto i.e. existence of a prima facie case, balance of convenience and irreparable injury, it must also take into consideration the conduct of the parties. In paragraph-22, Apex Court has observed that person who had kept quiet for a long time and allowed another to deal with the properties exclusively, ordinarily would not be entitled to an order of injunction. The

Court will not interfere only because the property is a very valuable one.

8. Applying the tests laid down in the aforesaid decision to the facts of the present case, I do not find that the Courts below have committed any error in dismissing the application. Hence, the Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Deshmane (PS)