

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition NO. 12239 OF 2015

SHRI. VINDUPRAKASH SAMARNATH
PANDEY

...Petitioner

Versus

SHRI. SHIVSHYAM AVADHNARAYAN
TIWARI AND ORS

...Respondents

....

Mr. Vijay Patil i/b. Mr. Ashok T. Gade, Advocate for the Petitioner.
Mr. Anil R. Mishra, Advocate for Respondent Nos.1 and 2.

....

CORAM : R. G. KETKAR, J.
DATE : 12th APRIL, 2016

P.C.

1. Heard Mr. Vijay Patil, learned Counsel for the petitioner and Mr. Anil Mishra, learned Counsel for respondent Nos.1 and 2, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 19.10.2012 passed by learned 3rd Jt. Civil Judge, Junior Division, Vasai below Exhibit-5 in R.C.S. No.723/2012 as also the judgment and order dated 20.2.2015 passed by learned District Judge-1, Vasai in Misc. Civil Appeal No.221/2010. By these orders, the Courts below rejected the application made by the petitioner, hereinafter referred to as the 'plaintiff', for injunction restraining defendant Nos.1 and 2 from disturbing

the possession of the plaintiff over the suit property i.e. plot No.7, Survey No.91, Hissa No.3 and Survey No.92, situate at village Dhaniv, Taluka – Vasai, District- Thane (for short, 'suit property') or any part thereof as also from dispossessing the plaintiff from the suit property.

3. The plaintiff has instituted suit *inter alia* for declaration that the sale deed dated 16.7.1992 executed by respondent No.3, hereinafter referred to as 'defendant No.3', in favour of respondent Nos.1 and 2, hereinafter referred to as 'defendant Nos.1 and 2', is ex-facie illegal, invalid, void ab initio and is not binding upon the plaintiff and/or upon the estate of deceased late Mahabal Shivmangal Pandey and/or upon the suit property or any part thereof. During pendency of the suit, the plaintiff took out application for temporary injunction. Defendant No.1 filed reply opposing said application. It was *inter alia* contended that defendant Nos.1 and 2 have purchased the suit property from defendant No.3 by registered sale deed dated 16.7.1992 and defendant No.3 has put defendant Nos.1 and 2 in possession and since then the defendants are in possession of the suit property. Defendant No.1 also referred to the deed of conveyance dated 6.3.1990 executed by late Mahabal, grand

father of the plaintiff and father of defendant No.3 in respect of plot No.6. The deed of conveyance was executed in favour of one Kalideen C. Tiwari and others. In that sale deed, there is a recital to the effect that late Mahabal, since deceased, had bequeathed the entire property to defendant No.3 vide registered will dated 13.2.1987. Defendant No.1, therefore, contended that the plaintiff does not have any right, title and interest in the property. By the impugned orders, the Courts below rejected the application. It is against these orders, the plaintiff has instituted the present petition.

4. Mr. Patil strenuously contended that the suit property was self-acquired property of his grand-father Mahabal, since deceased. The plaintiff being coparcener has right, title and interest in the suit property. The sale deed was executed on 16.7.1992. The plaintiff is born on 29.11.1984 and attained majority in the year 2002. In the first week of April, 2012, the plaintiff came to know that one Vedprakash yadav was trying to take possession. Immediately thereafter on 12.4.2012 the plaintiff obtained 7/12 extract and came to know that the suit property was allegedly sold by defendant No.3 in favour of defendant Nos.1 and 2. He immediately filed suit on 7.7.2012.

He submitted that there is no delay in approaching the Court. That apart, the plaintiff is in possession of the suit property. The Courts below were, therefore, not justified in dismissing the application. He submitted that the Courts below held that defendants 1 and 2 are in possession of the suit property. The Courts below were not justified in rejecting the prayer of injunction restraining defendant Nos.1 and 2 from creating third party interest. He, therefore, submitted that at least injunction restraining defendant Nos.1 and 2 from creating third party interest may be issued.

5. On the other hand, Mr. Mishra supported the impugned orders. He submitted that though the plaintiff claims to have attained the majority in the year 2002, present Suit is instituted in the year 2012. That apart, perusal of the recitals in the sale deed clearly shows that defendant No.3 handed over possession of the suit property to defendants 1 and 2 at the time of execution of the sale deed. From the date of execution of the sale deed, defendant Nos.1 and 2 are in possession of the suit property. Defendants 1 and 2 paid valuable consideration to defendant No.3. He further submitted that by registered will dated 13.2.1987 executed by Mahabal, since deceased, he has

bequeathed the entire property to defendant No.3. Thus the plaintiff cannot claim right, title or interest in the property on the ground that he is a coparcener.

6. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. The plaintiff is coming with the specific case that the suit property amongst others was self-acquired property of his grand-father Mahabal, since deceased. The plaintiff is born on 29.11.1984 and thus by birth he acquired right, title and interest in the suit property. The plaintiff has attained the majority in the year 2002. The plaintiff has instituted the present suit in the year 2012 challenging the sale deed executed on 16.7.1992.

7. Perusal of the sale deed *prima facie* shows that defendant No.3 has handed over possession to defendant Nos.1 and 2 at the time of execution of the sale deed. It also shows that valuable consideration was paid by defendant Nos.1 and 2 to defendant No.3. Paragraph-44 of the say filed by defendant No.1 also *prima facie* shows that defendant No.1 referred to deed of conveyance dated 6.3.1990 executed by Mahabal, since deceased, in favour of Kalideen C. Tiwari and others. Recital at

page-11 of that deed records that Mahabal had bequeathed entire property to defendant No.3 vide registered will deed dated 13.2.1987 . *Prima facie* in view thereof, the plaintiff cannot claim any interest in the suit property. As noted earlier, the plaintiff specifically came with the case that being coparcener by birth he acquired interest in the suit property and the suit property is the self-acquired property of his grand-father Mahabal. *Prima facie* the recital in the conveyance deed dated 6.3.1990 records that Mahabal had bequeathed entire property to defendant No.3 and defendant No.3 in turn had sold the property to defendant Nos.1 and 2. The Suit is instituted in the year 2012 claiming that the plaintiff is in possession.

8. In the case of ***Mandali Ranganna and others vs. T. Ramchandra and others, (2008) 11 SCC 1***, the Apex Court has observed in paragraphs-21 and 22 as under :

“21. While considering an application for grant of injunction, the court will not only take into consideration the basic elements in relation thereto, viz., existence of a prima facie case, balance of convenience and irreparable injury, it must also take into consideration the conduct of the parties.

22. Grant of injunction is an equitable relief. A 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. We are not however, oblivious of the fact that grant or refusal of injunction has serious consequence depending upon the nature thereof. The courts dealing with such matters must make all endeavours to protect the interest of the parties. For the said purpose, application of mind on the part of the courts is imperative. Contentions raised by the parties must be determined objectively.”

9. The Apex Court has held that delay in approaching the Court itself disentitles the party from claiming any equatable relief. Apart from this, in the present case both the Courts below declined to grant any relief. In view thereof, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)