

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 13471 OF 2016

Shri Tanaji Shankar Gorad
and another

...Petitioners

Versus

Shrawan Krishna Landage
And Ors.

...Respondents

....

Mr.B.A. Lawate, Advocate for the Petitioners.

....

CORAM : R. G. KETKAR, J.

DATE : 8th DECEMBER, 2016

P.C.

1. Heard Mr.B.A. Lawate, learned Counsel for the petitioners, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as 'defendants No.8 & 9, have challenged the judgment and order dated 7.11.2016 passed by the learned Ad-hoc District Judge-2, Pandharpur in Misc. Civil Appeal No.62/2012. By that order, the learned District Judge allowed the appeal preferred by the respondent, hereinafter referred to as the 'plaintiff', and quashed and set aside the judgment and order dated 19.7.2012 passed by the

learned Jt. Civil Judge, Junior Division, Sangola in Regular Civil Suit No.9/2012 and issued injunction restraining the defendants from causing obstruction and interference in the lawful possession of the plaintiff in the suit land, more particularly described in paragraph-1 of the plaint, till final decision of the suit.

3. In support of this Petition, Mr. Lawate submitted that the registered agreement of sale was executed by the defendant No.1 in favour of defendants No.8 & 9. Defendants No.2 to 7 are the consenting parties. Under that agreement, defendants No.8 & 9 agreed to purchase 1 Hectare 20 Ares from northern side of Gat No.46/3 in all admeasuring 2 Hectare 58 Ares. The agreement of sale also described the boundaries of 1 Hectare 20 Ares agreed to be sold by defendant No.1. In other words he submitted that the specific area with boundaries was agreed to be sold by defendant No.1 in favour of defendants No.8 and 9. He also invited my attention to the agreement dated 14.12.2011 executed between defendant No.1 on one hand and defendants No.8 & 9. Defendant No.1 agreed to hand over possession of suit land to defendants No.8 & 9 on tenancy basis till such time the conditions for executing sale deed are complied with. He

submitted that since then defendants No.8 & 9 are in possession of the suit land. He, therefore, submitted that the learned District Judge was not justified in allowing the appeal.

4. I have considered the submissions advanced by Mr.Lawate. I have also perused the material on record. Perusal of the agreement of sale shows that being land of new tenure permission of the competent authority was required to be obtained before executing the sale deed. The learned District Judge has referred to the specific recital in the agreement of sale. The learned District Judge also referred to 7/12 extract of the suit land which clearly indicates that after death of defendant No.1, the names of the plaintiff and defendants No.2 to 7, are entered in the revenue record. The learned District Judge observed that the recitals in the agreement of sale clearly provided that the possession is yet to be handed over to defendants No.8 & 9 only after execution of the sale deed. In fact it was specifically agreed between defendants No.1, since deceased, and defendants No.8 & 9 that the possession will be delivered at the time of sale deed.

5. For the reasons recorded in paragraphs-8 & 9 of the

impugned order, I do not find that the learned District Judge has committed any error in allowing the appeal. Reliance placed by Mr. Lawate on the agreement dated 14.12.2011 *prima facie*, at this stage, does not advance the case of defendants No.8 & 9, for more than one reason. In the first place this document is not referred in the reply filed by defendants No.8 & 9 and secondly in view of recitals in the registered agreement of sale, at this stage, the recitals in the document dated 14.12.2011 cannot be given weightage. In view thereof, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Deshmane (PS)