

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.13810 OF 2016

Sikander Mialal Desai

..Petitioner.

Vs

Shri Ahmed Kutub Desai and Ors

.. Respondents

Mr. N.J.Patil, Advocate for Petitioner.

Mr. V.B.Rajure, Advocate for Respondent no.1.

CORAM : R.G.KETKAR,J.

DATE : 16/12/2016

PC:

1. Heard Mr.N.J.Patil, learned counsel for the petitioner and Mr. V.B.Rajure, learned counsel for respondent no.1 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'defendant', has challenged the Judgment and order dated 7.10.2016 passed by the learned District Judge-9, Kolhapur in Misc.Civil Appeal No. 274 of 2015. By that order, the learned District Judge has allowed the Appeal preferred by the defendant and quashed and set aside the Judgment and order dated 8.9.2015 passed by the learned Civil Judge, Jr. Dn., Pet-Vadgaon below Exhibit-5 in Civil Suit No. 85 of 2015.

3. In support of this petition, Mr.Patil submitted that the defendant was cultivating suit lands, namely, Gat No.166/1 to 5 and Gat no. 166/6. On 17.1.2015, Ajj Desai, brother of defendant no.1, sold Gat No.166/1 to 5 admeasuring 14.66 R for Rs.

3,68,000/-. On the same day, he executed registered sale deed in respect of Gat No.166/6 admeasuring 6 R for Rs. 2,25,000/-. Respondent no.1's brother Ajij has permanently settled down in America. Even before execution of the sale deed, the plaintiff was cultivating these lands. Defendant no.1 or any other defendants did not make any grievance. He has taken me through the Commissioner's report at Exhibit-30 as also statement of defendant no.1 dated 7.5.2015 recorded by Assistant Police Inspector attached to Shirol MIDC Police Station, wherein defendant no.1 stated that his brother Ajij had sold the property bearing Gat No.166/1 to 5 which was in his possession (Ajij's possession). He has also invited my attention to hand-map attached to the statement to substantiate that Ajij had handed over possession of the area which was under his cultivation to the plaintiff where the plaintiff has grown sugarcane crop.

4. Mr. Patil submitted that the learned trial Judge has allowed the application after considering the recitals in the sale deed. The learned trial Judge held that the plaintiff is in possession of the suit properties.

5. On the other hand, Mr. Rajure supported the impugned order. He submitted that in Spl. Civil Suit No.475 of 2010 filed by defendant no.1 against his brother Ajij, the trial Court issued injunction on 1.3.2011 restraining Ajij from alienating the suit properties. Gat no.166/1 to 5 and Gat no.166/6 are also the suit

properties and injunction was issued restraining Ajij from creating third party interest. He further submitted that in that suit Imtiyaj, son of the plaintiff herein was impleaded as defendant. He also relied upon decisions of this Court in Keshrimal Jivji Shah vs. Bank of Maharashtra, 2004 (3) Mh.L.J.893 and Pratprao vs Ramchandra 2008 (3) Mh.L.J.130 to contend that transfer of immovable property in violation of order of injunction or prohibition is no transfer. It confers no right, title and interest in the transferee. In any case, injunction is an equitable relief. Ajij had executed sale deed in breach of the injunction order. Son of the plaintiff herein is also one of the defendants in that suit. He, therefore, submitted that as the plaintiff is praying for equitable relief, he is not entitled to injunction as the sale deed is executed in breach of injunction order.

6. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. In paragraph 21, the trial Court has referred to Suit No.475 of 2010 and injunction order issued in that suit. The learned trial Judge also observed that Gat no.166/1 to 5 and Gat no.166/6 were the suit properties in that suit as well. The learned trial Judge, however, thereafter proceeded to observe that there was no injunction in respect of these properties. As against this, the learned District Judge has referred to order passed in Suit No.475 of 2010 in paragraphs 8

and 9 and observed that the injunction was issued on 1.3.2011 and despite that the sale deed was executed. In paragraph 11, the learned District Judge observed that there was no partition by metes and bounds. In paragraph 15, the learned trial Judge also noted that in Regular Civil Suit No. 475 of 2010 the plaintiff's son Imtiaz was one of the defendants.

7. In view thereof, in my opinion, the learned trial Judge was not justified in issuing injunction. The learned District Judge rightly interfered with the order passed by the trial Court. As the plaintiff has sought equitable relief, he must come to the court with clean hands and must show that equity is in his favour. As the property is purchased in breach of the injunction order, equitable relief cannot be granted. The learned District Judge was, therefore, justified in allowing appeal preferred by the defendant. Hence, Petition fails and the same is dismissed. Needless to observe that the learned trial Judge will decide the suit on the basis of evidence on record and on its own merits and in accordance with law uninfluenced by the observations made herein. Liberty is reserved to the parties to apply for expeditious disposal of the suit. If such application is made, the learned trial Judge will pass appropriate order.

(R.G.KETKAR, J.)