

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 581 OF 2013

Vishwambhar s/o Narharrao Patil
age 64 years, occ. business
r/o Farshi Galli, Osmanabad
Tq. & Dist. Osmanabad

Petitioner

Versus

1. Shrikantrao s/o Sadashivrao Nanajkar
age 67 years, occ. agriculture
r/o Sunita Industries,
Plot No. 23, MIDC, Latur
Tq. & Dist. Latur.
2. Pandharinath s/o Babarao Atkare
age 64 years, occ. Pensioner
r/o Shivaji Nagar, TAmbari Vibhag
Osmanabad, Tq. & Dist. Osmanabad
3. Ambrushi s/o Chandrahar Jadhav
age 64 years, occ. pensioner
r/o as above.
4. The State of Maharashtra
Through Collector, Osmanabad
5. Sub-Divisional Officer,
Osmanabad.
6. Tahsildar, Osmanabad
Tq. & Dist. Osmanabad
7. Harischandra Pema Rathod
age major, occ. agriculture
r/o Near Erna College,
Osmanabad
Tq. & Dist. Osmanabad

8. Dagdu s/o Yemaji Rathod
age major, occ. agriculture
r/o as above.

Respondents

Mr. S.G. Chapangaonkar, advocate for petitioner.
Mr. S.P. Sonpawale, A.G.P. for respondents 4 to 6.
Mr. N.B. Khandare, advocate for respondents 1 to 3.
Mr. M.P. Tripathi, advocate for respondent no. 2.

CORAM : R.M.BORDE, J.

DATE : 16th NOVEMBER, 2017

ORAL JUDGMENT :

1. Heard.
2. Rule. Rule made returnable forthwith. Heard finally with the consent of learned counsel for the respective parties.
3. Petitioner is objecting to the order passed by the Civil Judge, Senior Division, Osmanabad in Misc. Application no. 22/2010 dated 19.03.2011, which order has been confirmed by the Adhoc District Judge - 2, Osmanabad, on 28.11.2012 in Misc. Civil Appeal No. 39/2011 presented by petitioner herein.
4. The dispute relates to land survey no. 98 situate at Osmanabad. Entire survey no. 98 admeasures 29 acres out of which, petitioner claims to have purchased a part of the land to the extent of 13 acres in an auction conducted on behalf of the State Government. Petitioner contends that he has deposited the sale price in respect of the property purchased by him however, he was not issued sale certificate by the State Government. Petitioner was

constrained to file Special Civil Suit No. 185/1996 before Civil Judge, Senior Division, Osmanabad, claiming relief of declaration and possession. The suit came to be decreed with direction to confirm the auction sale in favour of petitioner and put the petitioner in possession of the property. Aggrieved by the decision rendered in the suit, the State of Maharashtra presented Regular Civil Appeal no. 13/2000 before the District Judge, Osmanabad, together with application seeking condonation of delay. In the meanwhile, since there was no stay to the execution of the decree, according to petitioner, he presented Special Darkhast bearing no. 42/1999 and, in the proceeding of Darkhast, petitioner claims to have been put in possession over 13 acres land out of survey no. 98. This aspect however, has been disputed by respondents herein. So far as appeal presented by the State Government is concerned, the same came to be allowed and the suit was remanded back to the trial Court for fresh consideration. Petitioner herein challenged the decision of the appellate Court by presenting Appeal from Order No. 84/2006. The appeal however, was dismissed by this Court and the order passed by the trial Court came to be confirmed on 3rd December, 2010. During the pendency of appeal from order before this Court, on 16.06.2007 respondents 1 to 3 presented Misc. Application No. 86/2007 contending therein that they are purchasers of plot nos. 71, 72, 61 and 37. They have purchased the plots in the year 1983 from the original owner. Respondents made complaint that they have been wrongfully dispossessed in execution of decree in Special Civil Suit No. 185/1996. Respondents claimed restoration of possession in their favour. Respondents also presented application at Exh. 16 claiming temporary injunction against petitioner herein restraining

him from alienating the property. Application presented by respondents in Misc. Application No. 86/2007 was allowed by the trial Court and an order of temporary injunction was clamped against petitioner restraining him from alienating the suit property till disposal of misc. Application no.86/2007. It is further alleged that since there was breach of order of injunction at the hands of petitioner, respondents herein presented application under Order 39 Rule 2(a) of the Code of Civil Procedure seeking action for committing breach of the order of injunction by petitioner. Trial Court dealing with the application allowed the same and directed detention of petitioner herein for a period of three months by virtue of order passed on 19.03.2011. Being aggrieved by the order passed by the trial Court directing detention for committing breach of the order of injunction, petitioner herein presented Misc. Civil Appeal no. 39/2011. However, the appeal came to be dismissed. The order passed by the trial Court directing detention of petitioner is subjected to challenge in this petition.

5. Learned counsel for petitioner vehemently contends that respondents herein were infact not at all in possession of the property nor the property which is alleged to have been purchased by them is identifiable. The lay out plan allegedly prepared by the erstwhile owner is infact modified at the instance of petitioner and, a fresh lay out plan has been prepared and the same has also been sanctioned by the planning authority. Petitioner contends that since the suit property itself is not identifiable, it cannot be contended that petitioner has committed any violation in disposing of some part of the property which is stated to have been purchased by him and in respect of which he has been put in

possession.

6. Contentions raised by petitioner have been seriously disputed by respondents. It is contended that petitioner is guilty of several acts of commission of omission and that his claim is not bonafide. It is further contended that since the decree passed in favour of petitioner has been set aside by the first appellate court and since the matter has been remitted back, it was impermissible to contend that the petitioner has any concern with the property. It is also further contended that after remand of the matter by the first appellate court, which order has been confirmed by this Court, the suit has been decided and the decision has gone against the petitioner. Petitioner contends that the order of dismissal of suit is subjected to challenge in appeal presented by him before the first appellate court, as such, there is no finality to the civil proceedings initiated by him.

7. On consideration of contentions raised by rival parties, it does appear that there are disputed questions of fact raised by the parties which are required to be dealt with by the trial Court. Appeal presented by petitioner challenging the decision of the trial Court is continuation of the civil proceeding and there is no finality attached to the proceeding. Entitlement of petitioner in respect of the property purchased by him would be determined in the civil litigation. The question raised by petitioner in respect of identity of the suit property is also worth consideration. It does appear that petitioner, inspite of issuance of order of injunction by the trial Court, has dealt with the property and alienated some part thereof.

8. In the facts and circumstances of the case, since it is difficult to appreciate the rival contentions raised by parties involving disputed questions of fact, according to me, the ends of justice would be met by maintaining the interim orders passed by this Court during the pendency of writ petition. Learned counsel appearing for petitioner has invited my attention to the order passed by this Court directing him to deposit amount of Rs.10,00,000/- with the Registry of this Court on 28.07.2014 and also to submit undertaking that the petitioner shall not transfer an area to the extent of 9000 sq.ft. out of land survey no. 98. Petitioner contends that only part of the land purchased by him to the extent of 13 acres has been alienated and there is substantial area available and, in the event of passing of any direction in respect of the property as claimed by respondents, their interest can very well be safe-guarded.

9. In the peculiar facts and circumstances of the case, according to me, the order passed by the trial Court imposing sentence of imprisonment for three months for committing breach of order of injunction needs to be modified in view of the interim directions issued by this Court during the pendency of writ petition. Order passed by the Civil Judge, Senior Division, Osmanabad in Misc. Civil Application no. 22/2010 dated 19.03.2011 confirmed by the Adhoc District Judge - 2, Osmanabad in Misc. Appeal no. 39/2011 dated 28.11.2012 stands modified in view of interim order passed by this Court in the instant writ petition on 28.07.2014. Petitioner, in pursuance of the directions issued by this Court has already deposited an amount of Rs.10,00,000/- with the Registry of this Court. The amount

deposited by petitioner shall be construed as an order lieu of directions issued by trial Court imposing imprisonment for a period of three months. The amount deposited by petitioner in this Court shall be transferred to District Court, Osmanabad, before whom appeal is stated to be pending. The District Judge, Osmanabad, while disposing of the appeal shall pass appropriate order in respect of amount of Rs.10,00,000/- which is directed to be transferred to the said Court. The petitioner shall also tender an undertaking to the appellate Court to the effect that he shall not alienate / transfer area to the extent of 9000 sq. ft. out of survey no. 98 situate at Osmanabad. Petitioner shall tender undertaking within a period of eight weeks from today.

10. Rule made absolute accordingly. No costs.

R.M.BORDE
JUDGE

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