

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION (CIVIL) NO. 104 OF 2017
IN WP/10816/2014
WITH CA/5733/2017 IN RA/104/2017

SANTOSH SHIVAJIAPPA RESHME
VERSUS
VISHWANATH DHONDIBA DAVNE AND OTHERS

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Advocate for Applicant : Shri S.V. Chandole
Advocate for Respondent 1 : Shri S.G.Chapalgaonkar
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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 14, 2017
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PER COURT :-

1. This matter is heard at length.
2. Synoptical notes and sequence of events have been placed on record by the plaintiffs.
3. Keeping in view the parameters laid down by the Honourable Supreme Court in the matter of Lily Thomas Vs. Union of India [AIR 2000 SC 1650], a Review Application cannot be argued as if a Writ Petition is being reheard or an appeal is being considered. Under the garb of a review application, the applicant cannot be permitted to reopen the entire Writ Petition and canvass all grounds set out therein.

4. Issue is as regards the possession of the plaintiff Vishwanath in land S. No.235/B at Nilanga, which is subject matter of RCS No.388 of 2002, which has been filed for seeking perpetual injunction. It is not in dispute that the suit has not been filed for seeking possession. Same is pending hearing.

2. Question is, whether Vishwanath / original plaintiff was in possession of the suit property land S. No.235/B at Nilanga and whether Shevantabai was never in possession of the said property. Issue also is as to whether the review applicant Santosh has forcibly dispossessed Vishwanath after allegedly purchasing the suit land from defendants 2 and 3 / purchasers, who have been subsequently added to the suit.

3. In the suit preferred by plaintiff / Vishwanath, the trial Court had passed an order on 11.10.2001, thereby, injunctioning defendant No.1 / Shevantabai who is the married sister of Vishwanath, from interfering with and obstructing the possession of plaintiff Vishwanath. After the said order was passed and during the applicability of the said order, Shevantabai alienated the suit land on the basis of a sale deed to defendants 2 and 3, namely, Vrundabai & Anilkumar. Considering these

developments, plaintiff filed an application Exhibit 116, seeking injunctory orders against the added defendants 2 and 3. By order dated 13.12.2010, defendants 2 and 3 and their agents and any one on their behalf were restrained from obstructing the plaintiff's possession over the suit property. It is not disputed by the Review Applicant that this injunctory order is in force and binds the parties as no superior Court has set aside the order.

4. To wriggle out of the above stated situation, defendants 2 and 3 executed a sale deed in favour of defendant 4 Santosh, who is the Review Applicant herein and the original petitioner. Based on the said sale deed, Santosh allegedly hired hundred anti-social elements and forcibly entered the suit land on 8.8.2012 in between 4 to 5 pm and erected a tin shade for obstructing the plaintiff. The plaintiff therefore, filed application Exhibit 216 in the pending suit praying for restoration of the possession. Initially, that was rejected and after the Misc. Civil Appeal of Vishwanath was dismissed, he approached this Court in Writ Petition No.1369 of 2013. This Court, by judgment dated 3.5.2013, has allowed the petition and has restored Exhibit 216 for the trial Court to decide the same afresh. It was expressed by this Court that Vishwanath will have to show that he was dispossessed.

5. By order dated 12.6.2014, Exhibit 216 was allowed and Vishwanath was held to have been forcibly dispossessed and as such, he was held entitled for restoration of his possession to the suit property. Misc. Civil Application No.9 of 2013 was filed by Santosh and the same has been dismissed by judgment dated 3.10.2014.

6. This Court (Coram : S.B.Shukre, J.) by judgment dated 24.2.2017, has dismissed the Writ Petition. Review of the same is sought.

7. The Review Applicant Santosh, who claims to be the purchaser of the suit land on the basis of the sale deed dated 16.3.2012, is the Review Applicant. Learned counsel for the applicant has strenuously narrated the facts of the whole case and has drawn my attention to the nine grounds set out in the memo of the Review Application. He claims to be in possession on the basis of the sale deed.

8. There is no dispute that the injunctory order of the trial Court below application Exhibit 116, dated 13.12.2010 still binds the parties. Review Applicant Santosh is a stranger at the

stage at which he has interjected in the civil suit proceedings. He claims to have been put in possession by Vrundabai and Anilkumar, who in turn, claimed to have been put in possession by Shevantabai.

9. The nucleus is that by the first injunctory order dated 11.10.2002, Vishwanath was held to be in possession and not Shevantabai and hence Shevantabai was injuncted. By no stretch of imagination, could Shevantabai put Vrundabai and Anilkumar in possession when she herself was not in possession. Consequentially, even Vrundabai or Anilkumar were injuncted by concluding that they were not in possession. These sequence of events by a natural corollary would indicate that Santosh could not get into possession except by using force since, neither Shevantabai nor Vrundabai and Anilkumar were in possession and were injuncted from disturbing the possession of Vishwanath. The chain of events are, therefore, complete and would establish that Santosh has acquired the possession not by following the due process of law, but by external force, which is impermissible in law.

10. In the above set of facts and circumstances, the trial Court, the District Appeal Court as well as this Court (Coram :

S.B.Shukre, J.), have rightly concluded that prima facie, the plaintiff was forcibly dispossessed by Santosh and hence his possession was restored.

11. Considering the above, the contention of the Review Applicant is unsustainable as all earlier injunctory orders are in force and binding on all the parties. I, therefore, do not find any error in the judgment delivered by this Court on 24.2.2017. The Review Application is devoid of merits and hence, rejected.

12. At this juncture, the Review Applicant prays for continuation of stay granted ex-parte by this Court on 12.4.2017. Learned counsel for the plaintiff strenuously opposes by contending that when Review Applicant Santosh has dispossessed the plaintiff / Vishwanath by the use of force and violence and for which a police complaint has also been lodged, an irreparable harm would be caused to the plaintiff, if the stay is continued.

13. I find that this Court had granted an ex-parte stay to its own order on 12.4.2017, only because the Review Applicant expressed an apprehension of facing a possession warrant, though this Court (Coram : S.B.Shukre, J.) by judgment dated

24.2.2017 had declined to stay his judgment. Since I have concluded on the basis of the record that the review applicant Santosh has used extraneous force and an impermissible procedure to dispossess the plaintiff/ Vishwanath, I do not find it proper to accept the request of the review applicant.

14. Pending Civil Application does not survive and stands disposed off.

(RAVINDRA V. GHUGE, J.)

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