

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

906 APPEAL FROM ORDER NO. 31 OF 2016

Balaji S/o Ganpatrao Sampatwar .. Appellant

VERSUS

Bandigisab S/o Dulesab Shaikh .. Respondent

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Mr P. P. Mandlik, Sr. Counsel for the appellant
Mr H. A. Padalkar, advocate for respondent.

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CORAM : P.R. BORA, J.
DATED : June 28, 2017

PER COURT :

. Heard finally with the consent of both the parties.

2. The present appeal is filed against the order passed by the District Judge -1 at Billoli on 12.04.2016, below Exh.5 in Regular Civil Appeal No.02/2016.

3. The aforesaid application was filed by the present appellant seeking temporary injunction till decision of the appeal restraining the respondent from interfering the alleged possession of the appellant over the suit land, more particularly, 1 Hectare 54 Are out of Gat No.971. It was the contention of the appellant that, since 2007 till decision of the suit by the trial Court, injunction was operating in

favour of the present appellant and he was cultivating the suit land.

4. The application was strongly opposed by the respondent i.e. original plaintiff. It was the contention of the respondent/plaintiff that, after the suit has been decided on merits wherein the clear finding has been recorded by the trial Court that the agreement of sale dtd. 20.01.1999, on the basis of which, the appellant was claiming possession over the suit land was held to be a bogus document and in view of the further finding recorded by the trial Court after having assessed the entire evidence that the appellant was not in possession of the suit property but the respondent/plaintiff was in possession of the suit property, no *prima facie* case was made out in favour of the appellant so as to grant the interim injunction in his favour.

5. The learned District Judge, after having considered the submissions made on behalf of the learned Counsel appearing for the parties, rejected the application vide the impugned order.

6. Shri. Mandlik, the learned Senior Counsel appearing for the appellant, assailed the impugned order on various grounds. The learned Counsel submitted that, the finding recorded by the trial Court as about the agreement of sale dtd. 28.01.1999 to the effect that it is a bogus document since the signature of the vendor does not tally is apparently unsustainable. The learned Counsel submitted that, if that would have been the case, the best course was to forward the document for examination of the same by Handwriting Expert and the court could not have expressed any opinion as about the signature of the vendor thereon. The learned Counsel further submitted that, the trial Court has also ignored that since 2004

onwards continuously the appellant was shown in cultivating possession of the suit land, though the name of the respondent might have been shown in the owners column after 2005. The learned Counsel further submitted that, the revenue proceedings were initiated as about the mutation entry taken in respect of the name of the appellant shown in the cultivation column and same were confirmed upto the level of S.D.O. and ultimately the name of the appellant was recorded showing that the appellant was under cultivating possession of the suit land and same order has not been challenged by the present respondent before any higher authority or the Court.

7. The learned Senior Counsel further submitted that, the trial Court as well as the First Appellate Court, both have failed in appreciating that Kerba Shinde had filed an affidavit in a suit filed by Mangalbai candidly stating therein that, the sale deed executed in favour of the present respondent was in fact a document for security and further that no possession of the suit land was ever given to the respondent/plaintiff. The learned Senior Counsel submitted that, even the appellate court did not appreciate all these facts properly, which has resulted in passing an incorrect order causing serious prejudice to the rights of the present appellant.

8. Shri. Padalkar, learned Counsel appearing for the respondent/plaintiff, resisted the submissions made on behalf of the appellant. The learned Counsel submitted that, on the basis of the evidence which has come on record before the trial Court, a clear finding has been recorded by the trial Court that the alleged agreement of sale on the basis of which the appellant is claiming possession over the suit property is false. The learned Counsel

submitted that, it was well within the competence of the trial Court to compare the signatures of Ambulal Dhoot on the agreement of sale involved in the present matter and on the alleged deed of sale allegedly executed by said Dhoot in favour of the respondent/plaintiff. The learned Counsel submitted that, the observations made by the trial Court suggest that, from the mere perusal of both the signatures by bare eyes, it was quite clear that, the signature on the agreement of sale allegedly executed in favour of the appellant was not of Ambulal Dhoot. The learned Counsel submitted that, *prima facie* evidence was in favour of the appellant since, the sale deed was duly registered in the office of the Sub-Registrar. The learned Counsel further submitted that, the trial Court as well as the First Appellate Court, both have observed that in the subsequent transaction entered into by the wife of the present appellant in respect of the sale of adjacent gut number, the four boundaries mentioned in the said sale deed did not show that the present appellant was in possession of the land which he alleges to be in his possession. The learned Counsel submitted that, in view of the concrete evidence on record, the learned First Appellate Court has rightly rejected the application of the appellant and no interference is warranted in the order so passed.

9. I have carefully considered the submissions made on behalf of the learned Counsel appearing for the respective parties. I have also perused the impugned order, Judgment delivered by the trial Court in Regular Civil Suit No.50/2004 and the documents placed on record by both the parties. The regular civil suit was filed by the present respondent seeking declaration that, he is the owner of the suit property and is in possession of the same. He had also sought an injunction against the present appellant restraining him from

demolishing the *dhura* of suit property and causing obstruction to his possession. It is the matter of record that, the present appellant had filed counter claim against the plaintiff seeking relief of injunction against him restraining him from causing obstruction to his possession over the suit property. Thus, the appellant as well as the respondent both were claiming possession over the suit property. It was sought to be canvassed by learned Senior Counsel that, relief of simplicitor injunction was not liable to be granted in favor of the respondent / plaintiff in absence of any prayer by him seeking possession of the suit property. As against it was contended on behalf of the respondent that, since the respondent himself was in possession of the suit property, it was not required on his part to claim the possession of the suit property and as such the suit filed seeking injunction against the present appellant alleging that, he was obstructing the possession of the respondent / plaintiff was perfectly maintainable.

10. It appears to me that, it may not be appropriate at this stage to make detail discussion or to record any conclusion on this point. Similar such other objections are also vehemently raised by the parties. Before advertng to the said objections it has to be noted that, during pendency of the civil suit, an application was filed by the present appellant seeking injunction against the respondent and the same was allowed vide order passed by the trial Court on 08.08.2007 whereby the respondent was restrained from causing any sort of obstruction and interference in the land Gat No.971 to the extent of 1 Hectare, 54 Are situated at Kolambi, Tal. Naigaon (in short suit property). The order so passed was, admittedly in operation till decision of the suit and even thereafter.

11. From the material available on record and from the arguments advanced by the learned Counsel appearing for the respective parties, it is revealed that, voluminous oral as well as documentary evidence was produced before the trial Court. Scrutiny of the entire said evidence was practically impossible while deciding the application seeking for injunction during pendency of the appeal.

12. It further appears to me that, the first appellate court at the interim stage could not have recorded any finding whether the agreement to sale dated 20th January, 1999 is bogus and fabricated document or otherwise. Similarly it also could not have been possible for the first appellate court to record any finding in favour of the present appellant to the effect that, the sale deed dated 11.09.2002 executed in favour of the plaintiff is sham and bogus as has been claimed by the present appellant.

13. It has to be stated that, the first appeal is a valuable right and parties have right to be heard, both, on question of law and fact. It is well settled that, the first appellate court owes a duty to discuss the entire evidence afresh, take notice of the grounds taken and the reasons advanced by the trial court to reach its decision. Order-41, Rule-31 of the Code of Civil Procedure requires the first appellate court to write a self-contained Judgment by giving reasons for its decision on the points for determination and while doing so, the first appellate court being the final Court of fact has to consider the entire evidence on record. Considering the facts involved in the present case and the voluminous oral and documentary evidence on record, it appears to me that, it was unsafe to record even a *prima facie* conclusion without scrutinizing the entire evidence on record. In my opinion, the first appellate court has erred in doing so.

14. During the course of the argument it was submitted by the learned Senior Counsel that the appellant is ready to expeditiously conduct the first appeal before the first appellate court without asking for any adjournment and is also ready to submit the private paper book within a month. In view of the submission so made and taking into account the fact that it may be unsafe to reach to any final conclusion in the instant matter unless the entire evidence, which is voluminous as noted earlier, and the reasons given by the trial court in totality are considered by the first appellate court, it being the final court of facts, it appears to me that if the first appellate court is directed to expeditiously hear and decide the first appeal on merits and the interim protection operating in favour of the appellant since past 8 years is continued till then, it would meet the ends of justice.

15. In the above circumstance, without going into merits of the contentions raised by the parties, I deem it appropriate to pass the following order.

ORDER

- (i) The First Appellate Court is directed to decide Regular Civil Appeal No.02/2016 as expeditiously as possible and preferably within the period of six months from the date of receipt of writ from this Court.
- (ii) The appellant will prepare the private paper book within one month and will furnish it on record of the trial Court.
- (iii) Both the parties shall co-operate with the first appellate court in deciding Regular Civil Appeal No.02/2016

expeditiously. Till then, the order dtd. 08.08.2007, which was operating in favour of the appellant till decision of the suit, shall continue to operate.

- (iv) The appeal stands disposed of in the aforesaid terms.
- (v) Pending civil application, if any, stands disposed of.

(P.R. BORA, J.)

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