

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6593 OF 2016
WITH
CIVIL APPLICATION NO. 6329 OF 2017

NANAKCHAND PYARELAL TANEJA
VERSUS
VILAS ATMARAM PATIL AND OTHERS

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Advocate for Petitioners : Shri V.D.Hon i/b Shri A.V.Hon
AGP for Respondent 15 : Shri Bhagat N.T.
Advocate for Respondents 16 & 17 : Smt. S.B.Warma
h/f Shri B.R.Warma

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 11, 2017

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PER COURT :-

1. The petitioner is aggrieved by the order dated 31.3.2016, by which, the application filed by present respondent Nos. 16 and 17 has been allowed and they have been added as the defendants in RCS No.634 of 2012.

2. I have considered the submissions of Shri Hon, the learned Sr. Advocate and Smt. Warma, learned Advocate appearing on behalf of respondent Nos.16 and 17. None appears for respondent Nos.1 to 12, 13, 14 and 15.

3. After considering the extensive submissions of the parties, it is apparent that the plaintiffs / respondents 1 to 12 herein, have

suppressed from the trial Court that the original land owner Bhatta had a daughter by name Subhadrabai, besides the two sons; Atmaram and Bansilal, whose legal heirs are the plaintiffs. Consequentially, it was impressed upon the trial Court that Bhatta had only two sons and their legal heirs are the plaintiffs. The suit filed by the plaintiffs is for seeking possession and injunction against defendant No.1, who is the petitioner herein, as well as the vendors of defendant No.1, who are defendants Nos.2 and 3. Defendant No.4 is the land acquisition authority, who has acquired the portion of the suit land and the issue of apportionment of compensation is to be adjudicated upon, considering the claim of the plaintiffs.

4. After the trial Court set the stage for advancing of final arguments, respondent Nos.16 and 17 moved an application Exhibit 63, claiming to be the sons of deceased Subhadrabai. The trial Court has recorded that late Subhadrabai was the real sister of Atmaram and Bansilal and the plaintiffs should have indicated that branch of the family, notwithstanding that Subhadrabai got married to Daga Patil, prior to the amendment to the Hindu Law in 2005. The trial Court has observed that the opportunity of hearing should be given to the L.Rs. of Subhadrabai only to find out whether they could have any interest in relation to the claim putforth by the plaintiffs, who are the legal heirs of Atmaram and Bansilal.

5. Shri Hon has strenuously submitted that the petitioner is not the first purchaser. He has purchased the land at issue from Dattatray Bhamre, whose wife and son are added as defendant Nos.2 and 3. His sale deed, which is registered and executed in 1981 has not been challenged and cannot be challenged now, after a passage of 37 years.

6. Notwithstanding the strenuous submissions of Shri Hon, I do not find that the impugned order could be termed as being perverse or erroneous and likely to cause gross injustice to the petitioner. The Honourable Apex Court in the cases of Syed Yakoob Vs. K.S. Radhakrishnan and others [AIR 1964 SC 447] and Surya Dev Rai Vs. Ram Chander Rai [(2003) 6 SCC 682], has concluded that merely because a different or second view is possible, the impugned order cannot be interfered into in the Writ or supervisory jurisdiction of the High Court.

7. The apprehension voiced by the petitioner is that the added defendants are likely to raise an issue of the sale deed of 1981 and challenge the sale by Atmaram to Bhamre and then to the petitioner. Learned counsel for respondents 16 and 17 submits that they are likely to challenge that sale deed and any other sale deed. With this in view, this petition is partly allowed. The impugned order dated 21.3.2016 is modified only to the extent of the addition of the following direction:-

The trial Court, after respondent Nos.16 and 17 / added defendants, file their written statement in the suit, shall consider their claim and in the event any of such claims are not tenable in law on account of the law of limitation, it shall consider the issue of limitation before entertaining any claim of the added defendants.

8. The petitioner has filed the Civil Application, seeking leave to withdraw 75% of the compensation amount deposited, with interest. The order dated 27.6.2013 passed by the trial Court in Regular Civil Suit No.634 of 2012, would indicate in paragraph No.16 that the trial Court has said that the plaintiffs are likely to have a right in the compensation amount. Hence, this petitioner cannot be permitted to accept the whole amount. The trial Court, therefore, ruled that 25% of the compensation amount should be secured till the decision of the suit and observed that the petitioner / defendant shall not be permitted to accept the entire amount. This would lead to a conclusion that the petitioner can be permitted to withdraw 75% amount.

9. Considering the above, the Civil Application is disposed off by permitting the petitioner / defendant No.1 to move an application before the trial Court for withdrawal of the 75% amount. The trial Court would consider that application in the light of its observations in paragraph No.16 of the order dated 27.6.2013 and may consider

imposing such conditions as are permissible in law at the time of the withdrawal. After such an application is filed by the petitioner / defendant No.1, the same shall be decided expeditiously and within a period of three weeks, keeping in view that the petitioner submits that he has to face urgent medical attention and treatment.

(RAVINDRA V. GHUGE, J.)

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