

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8179 OF 2016
(Baburao Sukhdeo Thorat and another Vs. The State and others)

MrA.B.Kale., Advocate for the petitioners.
Mrs.S.S.Raut, AGP for respondent Nos. 1 and 2.
Mr.V.D.Hon, Sr.Counsel h/f Mr.A.V.Hon, Advocate for respondent
No.3.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 14/02/2017

PER COURT :

1. The petitioners in this petition have put forth a substantive prayer in terms of clauses C, D and E as under :-

“C. To kindly recall and set aside the order dated 21/04/2016 passed by this Hon’ble Court in Writ Petition No.1313/1999 and for that purpose issue necessary orders ;

D. Pending hearing and final disposal of this Writ petition, the order dated 21/04/2016 passed by this Hon’ble Court in Writ Petition No.1313/1999 may kindly be stayed ;

E. To grant an injunction restraining the respondents or their agents or servants from taking over the possession of the land of the petitioners and for that purpose issue necessary orders;”

2. In Writ Petition No.1313/1999, this Court had passed an order dated 11/06/2001. The direction issued by this Court in paragraph No.2 is reproduced as under :-

“2. After having gone through the facts of the case, it is absolutely clear that the possession of the present petitioner over the suit land cannot be said to have been established prima facie to grant any interim relief. However, the interests of the petitioner can be safeguarded by directing the respondent No.3 not to alienate the property in question in any manner nor shall the respondent no.3 induct any third party over the property in question nor shall he create any other encumbrance over the property till the decision of the present petition.”

3. The petitioner in the said writ petition was Yusuf Usman Shaikh and Abdul Raheman Karim Saheb was respondent No.3. Consequentially, this Court directed Abdul not to alienate the property in question in any manner and not to create any third party interest over the suit property.

4. On 21/04/2016, the petitioner Yusuf and respondent No.3 Abdul came up with consent terms dated 05/04/2016 which were signed by the litigating sides as well as their advocates and were supported by the individual affidavits of Yusuf and Abdul. By the consent terms, Yusuf was to take 4 acres and 2 gunthas on the Northern side and Abdul was to take 4 acres and 2 gunthas on the Southern side of the suit property. Both had agreed to erect a *bandh* between their respective share.

5. It is revealed that the petitioners Baburao and Dadasaheb purchased the whole suit property from Abdul. Abdul represented to the petitioners that there was no litigation pending on the property. The petitioners, therefore, obtained permission from the Additional Collector for seeking alterations in the revenue record and for entering their names in the 7/12 extracts. The petitioner in WP No.1313/1999 namely Yusuf approached the Additional Collector and prayed by his application dated 02/11/2015 that the permission be cancelled. In the meanwhile, Abdul filed an affidavit dated 29/03/2016 bringing it to the notice of the Collector that he would make an attempt to settle the matter with Yusuf and have WP No.1313/1999 settled.

6. On 21/04/2016, when this Court disposed of WP No.1313/1999 on the basis of the consent terms dated 05/04/2016, neither Yusuf nor Abdul informed this Court that Abdul had sold the suit property to Baburao and Dadasaheb. The Additional Collector, by order dated 13/05/2016, cancelled the permission granted for transferring the property in the name of Baburao and Dadasaheb on the basis of the information given by Yusuf that by order dated 11/06/2001 in WP No.1313/1999, this Court had prevented Abdul from alienating the

property. By order dated 13/05/2016, the Collector cancelled the permission since he was not informed by either Yusuf or Abdul that Writ Petition No.1313/1999 was settled between the parties.

7. The letter addressed by Yusuf dated 02/11/2015 to the Additional Collector clearly indicates that he was aware that Abdul had sold the suit land to Baburao and Dadasaheb. In this backdrop, the documents clearly speak out and indicate that Abdul had sold the suit property to Baburao and Dadasaheb when the injunctory order passed by this Court was in operation from 11/06/2001.

8. Grievance of the petitioners Baburao and Dadasaheb is that though the settlement before this Court at Exhibit X in terms of which this Court passed an order on 21/04/2016, would not bind Baburao and Dadasaheb, even if they institute a suit for any reliefs as they may desire to pray for, the sanctity rendered to Exhibit X by this Court vide order dated 21/04/2016 would come in way of Baburao and Dadasaheb.

9. While judging the prayers of the petitioners, it cannot be ignored that Exhibit X contains consent terms between Yusuf and Abdul which will surely not bind Baburao and Dadasaheb as they

were not party to the petition, in as much as they have voluntarily taken the risk of purchasing the suit property by the Sale deed dated 07/09/2015.

10. Considering the above, this petition stands disposed of with the following observations :-

[a] The consent terms Exhibit X dated 05/04/2016 in terms of which this Court has passed an order on 21/04/2016 disposing of WP No.1313/1999, would not bind Baburao and Dadasaheb, the petitioners herein.

[b] If these petitioners prefer to file a civil suit for any purpose whatsoever concerning the suit land which was subject matter at issue in WP No.1313/1999, the order dated 21/04/2016 passed by this Court would not come in their way.

[c] The Court dealing with such a suit and while considering the prayer being put forth by Baburao and Dadasaheb, shall take into account the conduct of all the parties including the said transaction between Abdul and these petitioners dated 07/09/2015 during the subsistence of the injunction granted by this Court on 11/06/2001.

[d] All contentions of all the litigating sides are, therefore, kept open to be considered on their own merits by the Court dealing with such a suit.

11. This Court, by order dated 17/01/2017 had directed the parties to maintain status-quo in respect of the suit property and the same

has been maintained till today. As such, the said order of status-quo shall continue for a period of one (1) month from today.

(RAVINDRA V. GHUGE, J.)