

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11998 OF 2017

ANGAD BHANUDAS WAGHMARE
VERSUS
RAJKUMAR GANPATI BAMNE AND OTHERS

...
Advocate for Petitioner : Shri Patil Paresh
h/f Shri Gitte Mukund D.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: October 03, 2017
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PER COURT :-

1. The petitioner is aggrieved by the judgment of the appellate Court dated 17.7.2017, by which, Misc. Civil Appeal No.43 of 2017, filed by the original plaintiff challenging the refusal of injunction by the trial Court, has been allowed and defendant No.5 has been temporarily restrained from causing obstruction in the peaceful possession of the plaintiff over the suit property.

2. Learned counsel for the petitioner has strenuously criticized the impugned judgment. He has drawn my attention to the 14 grounds formulated by him in the memo of the petition. Grievance is that when the suit preferred by the plaintiff is for a declaration that the sale deed dated 11.1.2017 is null and void

and for mandatory injunction, the trial Court had rightly rejected application Exhibit 5 and the appellate Court has delivered an erroneous judgment. Reliance is placed upon the sale deed, on the basis of which, the possession of the suit plot has been handed over to defendant No.5. Based on such a sale deed, it is claimed that the petitioner has taken the possession of the suit plot.

3. It cannot be disputed that a mere sale deed would not be a conclusive proof of a person having been put in possession of the suit property. Similarly, a sale deed would not dispossess a person, who is in possession of the said suit land and more so when the sale deed is executed behind the possessor of the plot and without his permission.

4. The trial Court had completely missed the point that while dealing with an application for injunction, the possession of the claimant has to be protected and the injunction should be of such a nature that the suit would not be frustrated and the rights of the claimants would not be truncated.

5. In the instant case, the moment the plaintiff realized that his aged mother has executed a sale deed in favour of defendant

No.5, without his knowledge, he has preferred the Civil Suit for protecting his possession, for injuncting the defendants and for a declaration that the sale deed is null and void. There is no prima facie evidence before the Court as to when did defendant No.5 acquire the possession of the suit plot and how was the possession delivered to him, when the plaintiff was in possession. All the defendants contend that the plaintiff is not in possession of the suit plot.

6. In my view, at a prima facie stage, the appellate Court has rightly considered the balance of convenience and has considered whether an irreparable loss would be caused to the plaintiff, if the defendants were permitted to dispose off the suit plot. As it is, the defendants have created third party interest by selling the plot to defendant No.5. Considering the peculiar facts, the appellate Court has rightly injuncted defendant No.5 from dispossessing the plaintiff.

7. Considering the above, this petition being devoid of merits, is dismissed.

(RAVINDRA V. GHUGE, J.)

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