

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12645 OF 2016

BHAGWAN VITTHAL PATIL
VERSUS
BEBABAI PRALAD PATIL AND OTHERS

...

Advocate for Petitioner : Smt. Warma S.B.
h/f Shri Warma B.R.
Advocate for Respondents : Shri Patil P.R.
h/f Shri Bhokarikar M.R.

...

CORAM : RAVINDRA V. GHUGE, J.
Dated: January 06, 2017

...

PER COURT :-

1. The petitioner is aggrieved by the order dated 24.11.2016, delivered by the Appeal Court, by which, Misc. Civil Appeal No. 13 of 2016, filed by the respondent / original defendants has been allowed and the injunction granted in favour of the petitioner / plaintiff has been vacated. RCS No. 63 of 2015 is still pending.

2. I have considered the submissions of the learned Advocate for the petitioner who has strenuously criticized the impugned order. Grievance is that the petitioner is in settled possession of the suit property. He is not seeking a declaration as regards his title to the property in the suit. The suit has been filed for seeking specific performance of contract, on the basis of an oral agreement that the respondents / defendants 1 and 2 who are original owners, have orally agreed to sell the suit property to the petitioner.

3. It is further submitted that considering the settled possession of the petitioner, the Appeal Court should not have interfered with the order of injunction granted by the trial Court.

4. Shri Patil, learned Advocate appearing on behalf of the respondents submits that there is no dispute about the ownership, right, title and interest of defendant Nos.3 and 4 with regard to the suit property.

5. I have considered the submissions of the learned Advocates as recorded above and have gone through the order passed by this Court dated 2.7.2014 in Writ Petition No.140 of 2013.

6. This Court in an earlier round between the parties in Writ Petition No.140 of 2013 has observed in paragraph No.2 of its order dated 2.7.2014, that the present petitioner claims to be put in possession as a power of attorney holder of the respondents and the respondents had succeeded in the civil proceedings right upto the Honourable Supreme Court. In paragraph No.3 this Court has observed that the petitioner is unable to demonstrate the source of his entry in the land in question at the relevant time.

7. While passing the impugned order, the Appeal Court has recorded in paragraph No.9 that the plaintiff has not denied the

ownership of defendant Nos.1 and 2 over the suit property. The plaintiff will have to prove that defendants 1 and 2 orally agreed to sell the suit property to him. Prima facie, there was no evidence to show any oral agreement between the plaintiff / petitioner herein and defendants and 2.

8. In paragraph No.10, the Appeal Court has noted that the defendants 1 and 2 have already sold the suit property to defendants 3 and 4 by a registered sale deed. The possession receipt dated 3.8.1997 indicates that the suit property was the land which was given in possession of the plaintiff only on account of being the power of attorney holder on behalf of defendants 1 and 2. He was thus in possession for and on behalf of these two defendants. The Appeal Court, therefore, concluded that in such circumstances, injunction cannot be granted against the original owners of the suit land.

9. In the light of the above, I do not find that the impugned order could be termed as perverse or erroneous. This petition being devoid of merits is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

...