

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER 330 OF 2016
WITH
CIVIL APPLICATION NO.427 OF 2016
IN
APPEAL FROM ORDER 330 OF 2016

Rajani Nishikant Kore & Ors. ...Appellants
Versus
City Surevy Officer, Sangli & Ors. ...Respondents

Mr.Ashutosh M.Kulkarni for the Appellant/Applicant.
Mr.Shashank C.Mangle for the Respondent No.8.

CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED: 16th June, 2017

PC:-

1. With the consent of the parties, matter is taken up for final hearing at the stage of admission.

2. The Appellant herein, who are the Plaintiffs in Regular Civil Suit No.184 of 2013 have challenged the impugned order dated 7.12.2015, whereby the learned Civil Judge,

Senior Division, Sangli dismissed the application for temporary injunction, seeking to restrain the Respondent Nos.7 and 8 herein from disturbing their possession and from alienating the suit property pending disposal of the suit.

3. At the outset, it may be mentioned that the Respondent No.7 has expired during the pendency of the suit. Shri.Ashutosh Kulkarni, the Learned Counsel for the Appellant has submitted that he is restricting the relief only as against the Respondent No.8.

4. The brief facts necessary to decide this appeal are as under:-

The Appellants claim to be the owners of the property under city survey no.1941 admeasuring 493.4 sq.meters situated at Tq.Miraj, Sangli-Vishrambag Sangli. The said property shall be hereinafter referred to as the 'suit property'.

5. The Appellants are the legal representatives of one Balwant Kore. The case of the Appellants is that the suit property was originally a Devasthan Inam land, belonging to Patwardhan Sansthan. Though the suit property was an agricultural land, the Sansthan had permitted Balwant Kore to use the suit property for non-agricultural purpose. It is alleged that the property was surveyed in the year 1984 and that the name of Balwant Kore was recorded in the inquiry register. The Appellants claim that in the year 1993 for the first time they learnt that the name of Balwant Kore was not recorded in the survey records. The Appellants have further stated that they subsequently, learnt that the name of the Shivaji Sawant was recorded in the survey records. The Appellants claim that the said survey entry is forged and fabricated and on the basis of the said survey entry the legal representatives of said Shivaji Sawant have executed a sale deed in favour of the Respondent No.7 and 8. The case of the Appellants is that said Shivaji Sawant and his legal representatives had no right, title or interest in the suit property and consequently,

the Respondent Nos.7 and 8 could not derive any right, title or interest in the suit property. Based on these pleadings, the Appellants filed a suit for declaration, permanent injunction, and for cancellation of the sale deed. Pending the suit the Appellants sought to restrain the Respondents from disturbing their possession and from transferring alienating and/or creating third party interest in respect of the suit property.

6. The Respondent No.8, the only contesting party, has claimed that he has purchased the suit property from the legal representatives of Shivaji Sawant by sale deed dated 09.09.2010 on payment of consideration of Rs.36,00,000/-. He has submitted that the public notice in respect of the said transaction was published in a local daily and that no objections were received from any party. The Respondent No.8 claimed that he is a bonafide purchaser and is in possession of the suit property since the date of the execution of the sale deed.

7. Mr. Ashutosh Kulkarni, the learned Counsel for the Appellants submitted that the Appellants are the owners of the suit property. He further submitted that the name of Balwant Kore was recorded in the survey records and that his name came to be deleted and name of Shivaji Sawant came to be recorded in survey records by fraud and fabrication. He has submitted that by order dated 1.1.2014 the Survey Officer Sangali has held that the name of Shiwaji Sawant was wrongly recorded and that his name is ordered to be deleted from the survey records. The learned Counsel for the Appellants has submitted that since Shivaji Sawant had no right, title or interest in the suit property, the Respondent No.8 cannot claim any right or title to the suit property on the basis of the sale deed executed by the legal representatives of Shivaji Sawant. He has submitted that the Appellants are the owners in possession of the suit property and and hence are entitled to protect the title as well as possession in respect of the suit property. He has submitted that the Appellants having proved prima facie case were entitled for interim relief as

prayed. He has submitted that the learned Trial Judge was therefore, not justified in declining the interim relief as claimed by the Appellant.

8. Mr. Mangle, the learned Counsel for the Respondent No.8 submits that the name of Shivaji Sawant was recorded in survey records. He has submitted that the averments in the plaint clearly show that this fact was known to the Appellants since the year 1993. He has further submitted that the Respondent No.8 had purchased the said property vide sale deed dated 9.9.2010 on payment of consideration of Rs.36,00,000/-. He has submitted that the said sale deed was executed after giving due public notice and that no objections were raised by the Appellants at the time of execution of the said sale deed. He has submitted that Respondent No.8 is a bonafide purchaser and is in possession of the property since the date of the execution of the sale deed. He has further submitted that he was not a party to the proceedings initiated

before the Survey Officer and as such the order dated 1.1.2014 is not binding on him.

9. I have perused the impugned order; pleadings and the documents placed on record and considered the submissions advanced by the learned Counsels for the Appellants and Respondents.

10. It is not in dispute that the Appellants are claiming right to the suit property through Balwant Kore. It is to be noted that though the Appellants have claimed that the Devsthan Inam had permitted Balwant Kore to use the suit property, which was an agricultural land for non-agricultural purpose, it is also an undisputed fact that the name of Balwant Kore was not recorded in the property card. Furthermore, the property was shown in 7/12 extract as an agricultural land. Though the name of Balwant Kore was recorded in the inquiry register, it is a fact that his was not recorded in 7/12 extract and in fact the name of Shivaji

Sawant was recorded in 7/12 extract. The pleadings in the plaint at paragraph 8.11 and 8.12 clearly indicate that as in the year 1993 the Appellants/Plaintiffs were aware that the name of the Balwant Kore was not recorded in 7/12 extract. The Appellants/Plaintiffs have also admitted that despite knowing the said fact they have not taken steps to correct the survey entry.

11. The order dated 1.1.2014 passed by the survey officer reveals that during the pendency of the suit, the Appellants had filed an application before the Survey officer to delete the names of the legal representatives of Shivaji Sawant from the survey records. By the said order the survey officer has ordered to delete the names of Shivaji Sawant and his legal representatives from the said survey entry. It is pertinent to note that the legal representative of Shivaji Sawant had already sold the property to the Respondent No.8/Defendant No.8. Despite being aware of the fact that the suit property had been purchased by the Respondent No.8, the Appellants

had not made him a party to the said proceedings and consequently the Respondent No.8 was not heard in the matter. Hence, prima facie the said order is therefore, not binding on the Respondent No.8.

12. Be that as it may, the records prima facie reveal that the Respondent No.8 had purchased the property in the year 2010 for consideration of Rs.36,00,000/-. The Respondent No.8 had given due notice in daily "Dainik Pudhari" before entering into the said sale transaction. Neither the Appellants nor any other person had raised any objection for the sale of the property. The learned Trial Judge was therefore, justified in holding that the Respondent No.8 is a bonafide purchaser and is in possession of the suit property.

13. The learned Judge after considering the material on record has held that the Appellants/Plaintiffs have failed to establish the prima facie case. The findings of the Trial Court

are neither arbitrary nor capricious. Hence, there is no reason to interfere with the exercise of discretion of the Trial Court.

14. Under the circumstances, the Appeal is dismissed.

15. It is clarified that this court has examined the impugned order within the limited scope of Provisions of Order XLIII Rule 1 (r) of the Code of Civil Procedure. Therefore, the learned Trial Judge shall not be influenced by observations recorded by this Court herein above, while deciding the suit on merits.

16. At this stage, the learned Counsel for the Appellants/Plaintiffs submits that ad-interim relief which was operating from order dated 20th June, 2016 be continued for a period of 8 weeks from today. The learned Counsel for the Respondent No.8 has no objection for the same. Hence, the order dated 20th June, 2016 shall continue till the period of 8 weeks from today.

17. In view of the dismissal of the Appeal from order, the Civil Application does not survive, hence, disposed of.

(ANUJA PRABHUDESSAI, J.)