

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9077 OF 2015

Shri Chandrakant Babanrao
Bidkar and Anr.

..Petitioners.

Vs

Miss Kavita Omprakash
Mundada and Ors.

.. Respondents

Mr.Chandrakant B.Bidkar, petitioner no.1 in-person.
Mr. Avinash H. Fatangare, Advocate for Respondent no.1.
Mr. Sachin Kankal, A.G.P for Respondent no.4

CORAM : R.G.KETKAR,J.
DATE : 16/02/2017

PC:

1. Heard Mr. Chandrakant Bidkar, petitioner no.1 in-person, Mr. Avinash Fatangare, learned counsel for respondent no.1 and Mr. Sachin Kankal, learned A.G.P for respondent no.4 at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as 'defendants', have challenged the Judgment and order dated 4.10.2014 passed by the learned District Judge-16, Pune in Misc. Civil Appeal No. 274 of 2014. By that order, the learned District Judge allowed the Appeal and quashed and set aside the Judgment and order dated 20.6.2014 passed by the learned 18th Jt. Civil Judge, Jr. Dn., Pune below Exhibit-5 in Regular Civil Suit No. 303 of 2014. The learned District Judge issued injunction restraining the defendants from disturbing possession of the

respondent, hereinafter referred to as plaintiff, over Survey No.96, Hissa No.5A, 0.20 Ares, situate at Manjri Budruk, Taluka Haveli, District-Pune (for short, suit property'), as more particularly described in paragraph 1 of the Plaint.

3. The plaintiff has instituted suit for perpetual injunction restraining the defendants from disturbing her possession over the suit property. Pending the suit, she took out application Exhibit-5 for temporary injunction. By order dated 20.6.2014, the learned trial judge dismissed the application. Aggrieved by that decision, the plaintiff preferred appeal which was allowed by the impugned order. It is against this order, the defendants have instituted the present petition.

4. In support of this petition, Mr. Bidkar strenuously contended that the plaintiff has prayed only for injunction. Suit is for injunction simplicitor. He submitted that the defendants are also claiming title over the suit property. As the questions of title are involved, the same can be examined only in title suit for declaration and consequential reliefs and not in a suit for injunction simplicitor. In support of this proposition, he relied upon decision of the Apex court in Anathula Sudhkar Vs.P. Buchi Reddy, AIR 2008 SC 2033.

5. Mr. Bidkar has also invited my attention to :

1. Map at page 22;
2. Agreement of Sale dated 10.12.1999 entered into by and

between (1) Shri Shaikh Juned Ahmed Hafizulla, (2) Shri Shaikh Umer Ahmed Hafizulla, (3) Shri Shaikh Irfan Ahmed Hafizulla, (4) Shri Shaikh Zuber Ahmed Hafizulla (for short, Hafizullas) and (1)Gavli Samaj Dairy Products Company Ltd, (2) Shri Chandrakant Babanrao Bidkar, (3) Shri Vipin Chandrakant Bidkar (Gavalisamaj and defendants no.2 & 3) and in particular 3rd recital at page 26 (internal page 4), clauses 3, 5 and 7;

3. Receipt issued by Hafizullas mentioning that they have handed over vacant and peaceful possession of land bearing Survey no.96, Hissa No. 5A, admeasuring 19 Ares of village Manjri Budruk, Ghule Wasti, Pune, on 26.1.2000 and about receipt of full and final payment as per agreement dated 22.2.2000.

4. Agreement of Sale dated 22.2.2000 executed by Shri Shaikh Junai Ahmed Hafizulla, Shaikh Umair Ahmed Hafizulla , Shaikh Irfan Ahmed Hafizulla in favour of defendant no.1 and his wife as also defendant no.2 and his daughter and also Schedule of property in the said agreement.

6. Mr. Bidkar further submitted that the defendants have made complaints to Police Commissioner, Pune Police Inspector attached to Hadapsar Police Station on 12.1.2014 against the father and brother of the plaintiffs under Sections 406, 420, 471 read with 34 Indian Penal Code, 1860. He submitted that defendants are in possession of the suit property. The learned

District Judge was not justified in interfering with the discretionary order passed by the learned trial Judge. He, therefore, submitted that petition requires consideration.

7. On the other hand, Mr. Phatangare supported the impugned order. He submitted that the defendants are claiming possession on the basis of unregistered agreements of sale dated 10.12.1999 and 22.2.2000. Both these agreements do not have recital about handing over possession by vendors to the defendants. As against this, the plaintiff has purchased the suit property by registered sale deed dated 15.7.2004. He invited my attention to clauses 5 and 6 of the said sale deed. He submitted that the plaintiffs have become owner on the basis of the said sale deed. As of date, the defendants have no right, title and interest over the suit property and consequently there is no dispute between the parties as regards title of the property. He, therefore, submitted that no case is made out for interfering with the impugned order.

8. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. I have also considered written arguments submitted by Mr. Bidkar and in particular paragraph 18 thereof. The short question is whether the plaintiff is in possession as claimed by her or the defendants are in possession as claimed by them. The defendants have relied upon unregistered agreements

of sale dated 10.12.1999 and 22.2.2000. Perusal of these agreements prima facie does not indicate that vendors have handed over possession of the suit property to the defendants. Mr Bidkar undoubtedly relied upon receipt issued by Hafijullas setting out therein that they have received full and final consideration in respect of suit property as per agreement dated 22.2.2000 and that they have handed over vacant and peaceful possession with the suit property on 26.1.2000 to defendant no.1 and others. If at all the possession was already handed over to defendant no.1 and others on 22.1.2000, surely, this could have been reflected in the agreement of sale executed on 22.2.2000. However, there is no recital in the agreement of sale dated 22.2.2000 that vendors have handed over possession to defendants no.1 and others. As against this, perusal of the registered sale deed dated 15.7.2004 and in particular clauses 6 and 7 shows that possession of the suit property was handed over by Shaikh Junai Ahmed Hafizulla, Shaikh Umair Ahmed Hafizulla, Shaikh Irfan Ahmed Hafizulla to the plaintiffs. In view thereof, I do not find that the learned District Judge has committed any error in interfering with the trial Court's order.

9. Mr. Bidkar relied upon the decision of Anathula Sudhkar (supra). In paragraph 17, the Apex Court has summarized the position in regard to the suits for prohibitory injunction relating to immovable property. In the present case, prima facie, there is

no cloud raised over plaintiff's title as the defendants have set up their title on the basis of unregistered agreements. In view thereof, the decision of Anathula Sudhakar does not advance the case of the petitioners. Hence, Petition fails and the same is dismissed. Order accordingly.

(R.G.KETKAR, J.)