

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4741 OF 2017

Anna Mahadeo Karande	...	Petitioner
Vs.		
Bibhishan Murlidhar Takmoge & Ors.	...	Respondents

Mr. Sanjay D. Thokade, for the petitioner
Mr. Sandeep S. Salunkhe, for the respondent Nos. 1 & 2.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 30th October, 2017.

P.C.

Heard. Rule. Rule made returnable forthwith with consent of the parties.

2. The petitioner herein happens to be the original defendant No.1 in Civil Suit No.29 of 2010 pending before the Civil judge, Junior Division, Madha.

3. It is the case of the plaintiff that by a Sale Deed dated 13.1.2006/13.2.2006, the plaintiff had purchased land Gat No.64/3 admeasuring 1 H. 30 R. from Dharamraj Shinde. The suit is filed for perpetual injunction. It is the case of the defendant No.1 that by an agreement of sale dated 15.9.2001, Dharamraj had agreed to sell the suit property in favour of the defendant No.1 and on the same day had put him

in possession.

4. The plaintiff had filed an application under Order XXXIX Rules 1 and 2 seeking temporary injunction. The same was rejected by the learned trial Court vide order dated 5.1.2015. While considering the application filed by the plaintiff under Order XXXIX Rule 1, the learned trial Court had taken into consideration the fact that the plaintiff has not filed the original sale deed on record, but has placed implicit reliance upon the mutation entry No.2222 which was in his favour. The learned trial Court has also considered the revenue records which showed the permission in favour of the petitioner to construct a house on Gat No.64/3 as well as the other revenue record including the report of the Talathi which was at Exhibit 56/1 and 56/2 of the original trial Court's record. The learned trial Court has taken into consideration the permission granted in favour of the petitioner by the Gram-Panchayat vide order dated 10.12.2001. The Form No.8 i.e. the certified copy of the assessment list which is dated 27.9.2009. The findings of Tehsildar Mohol are in the order dated 17.1.2008 whereas the present petitioner was shown as (Wahiwatdar) that the petitioner is in possession of the suit property. The order passed by the Tahsildar was challenged before the Sub-Divisional Officer at Kurduwadi by Dharamraj Shidne. The said appeal was dismissed by an order dated

31.3.2008.

5. Being aggrieved by the order dated 5.1.2015, the plaintiff had filed Misc. Appeal No.11 of 2015 before the Adhoc District Judge at Solapur. The learned appellate Court has observed that defendant No.1 had not filed the documents on record and therefore, according to the appellate Court, the fact that there is a registered sale deed in favour of the plaintiff, the impugned order was quashed and set aside. The appellate Court has not taken into consideration the fact that the original sale deed is not filed on record and the plaintiff is placing implicit reliance upon the mutation entry at 2222. The learned appellate court has further observed that although the revenue records show that the petitioner had built a house on that date. In any case, this is an unregistered agreement and therefore cannot be relied upon. It is further pertinent to note that the appellate Court has observed that the alleged agreement to sale is also not on record and therefore, it is doubtful as to whether the Gram Panchayat had granted permission.

6. The learned counsel for the petitioner submits that defendant No.1 has filed a separate suit seeking the relief of setting aside the sale deed dated 13.1.2006 and the suit is filed for specific performance and for setting aside the sale deed and therefore the said issue is pending. At this stage, the

learned counsel for the respondents submits that the orders passed by the Revenue Authorities i.e. by Tahsildar as well as the Sub-Divisional Officer have been stayed by the Collector. The learned counsel for the petitioner, upon instructions, submits that the said proceedings have been dismissed. However, it is a disputed question which need not be gone into at this stage. The appellate Court by an order dated 8.9.2015 has allowed the appeal and set aside the order passed by the Civil Judge, Junior Division, Madha. The appellate Court has assumed, on the basis of oral submissions that the permission was granted to build a house on Gat No.64/1. It would be a typographical error as 64/2. The same cannot be considered unless there is evidence to that effect. When the sale deed which was the basis of the plaintiff's claim, was not filed on record, the injunction should not be granted just on the basis of averments in the plaint. When the plaintiff could not place material to satisfy the Court how there will be multiplicity of proceedings in the event of refusal of injunction, then injunction cannot be granted. Interim orders are granted on the basis of the case made out prima facie in the pleadings and that in the interest of justice such interim order is necessary in order to prevent abuse of process of law to prevent wastage or to prevent damage, alienation, sale, removal or dispossession of the plaintiff or to prevent any irreparable injury to the plaintiff. The

appellate jurisdiction being equitable, interference will be governed by equitable principles. Appellant must satisfy as to how the discretion has been improperly exercised. Hence, the appellate Court cannot grant relief which was denied by the trial Court after considering the merits.

7. It is settled position of law that while considering the application under Order XXXIX Rules 1 and 2, it is incumbent upon the Court to see whether the plaintiff has made out a prima facie case and the balance of convenience is in favour of the plaintiff. The order passed by the trial Court was on the basis of records filed by both the parties and in fact called for no interference. However, the appellate Court has committed a patent error by recording that the defendant No.1 had not filed documents on record. In fact, the documents were not only filed on record, but were exhibited by the trial Court and the same ought to have been taken into consideration. By allowing the appeal, the appellate court has granted final relief in the suit which is not permissible in law.

8. Hence, the order dated 8.9.2015 passed by the appellate Court deserves to be quashed and set aside. In the interest of justice, it would be appropriate that the parties to Civil Suit No.29 of 2010 pending before the Civil Judge, J.D.Madha maintain status quo till the disposal of the suit. The

suit is expedited. The learned Civil Judge, J.D. Madha is requested to conclude the suit within one year from the date of receipt of this order.

[SMT. SADHANA S.JADHAV, J.]