

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 11725 OF 2013

Bramhacorp Infra Structures Pvt. Ltd. & Ors. ... Petitioners
Vs.
Tukaram Gangaram Sable & Anr. ... Respondents

Mr. R.D. Soni a/w. Mr. Sachin Khandagale and Mr. V.R. Kasle i/b.
Ram & Co., Advocate for the petitioners.
Mr. Tejesh Dande i/b. Tejesh Dande & Associates, Advocate for
respondent nos. 1 and 2.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE: 18th April, 2017.

P.C.:

Rule. Rule made returnable forthwith. By consent, the Petition
is heard finally and disposed of at the stage of admission.

2. This Writ Petition filed under Article 227 of the Constitution of India is directed against the order dated 11th November, 2013 passed by the learned District Judge-6, Pune in Miscellaneous Civil Appeal No. 372 of 2013. The petitioners are the original plaintiffs, who have filed Regular Civil Suit No. 1698 of 2013 for simplicitor injunction against the respondents. The plaintiffs have moved an application for temporary injunction. The said application was opposed by the respondents/defendants by filing say. The learned trial Judge, i.e.,

24th Joint Civil Judge Junior Division, Pune by order dated 10th October, 2013 allowed the Application Exhibit 5 and defendant nos. 1 and 2/respondents were temporarily restrained from obstructing possession of plaintiffs and development activity on the suit property. The said order was challenged by the respondents before the District Court by filing Miscellaneous Civil Appeal No. 372 of 2013. The said Appeal was allowed and the order passed by 24th Joint Civil Judge Junior Division, Pune below Exhibit 5 dated 10th October, 2013 was quashed and set aside. The prayer of temporary injunction of the petitioners was rejected by the learned District Judge-6, Pune. Hence, this Writ Petition.

3. The learned counsel for the petitioners has submitted that the petitioners are the purchaser of the suit land and in lawful possession of the suit land. Earlier one Daulat Savla Sable was the owner of the suit land and he entered into Development Agreement on 7th July, 2000 with Mr. Sunil Shahajirao Jadhav and Mr. Rajaram Jaywantrao Lokhande. The original owner, i.e., Daulat Sable expired on 10th March, 2001 leaving behind his wife Leelabai Sable. Leelabai Sable executed registered sale deed with Rajaram Lokhande and Sunil Jadhav in respect of the suit land on 8th January, 2002. The learned

counsel has further submitted that on 8th August, 2006, Rajaram Lokhande and Sunil Jadhav entered into Development Agreement with petitioner No. 1, which is a registered company and thereafter on 17th November, 2011 the parties executed registered sale deed of the suit land. It is submitted by the learned counsel for the petitioners that the petitioners are in possession of the suit land since 2006 when the Development Agreement was executed between the petitioners and Rajaram Lokhande and Sunil Jadhav, predecessor in title. The learned counsel read over the orders passed by the learned trial Judge and also the order passed by learned District Judge in Miscellaneous Civil Appeal. He argued that the respondents are claiming ownership and title in the suit land by way of will, which was executed by Daulat Sable on 1st August, 1989, however, no documents other than will are produced before the court to show that any right is created in their favour till today. He submitted that the order passed by the trial Court is well reasoned where the learned trial Judge has discussed the point of possession, registration of the sale deeds and the effect of registration, which is to be upheld and the order passed by the District Judge is to be set aside.

4. The learned counsel for the respondents has submitted that the respondents claim their right in the suit property by way of inheritance. He submitted that respondent No. 1's father, i.e., Gangaram Sable was a real brother of Daulat Sable and the suit property is an ancestral property of Daulat Sable and Gangaram Sable, therefore, Gangaram Sable's son Tukaram, who is respondent No. 1 and Tukaram's son Ramdas, who is respondent No. 2 have undivided ownership share in the suit land. He further submitted that the transactions which are taken place between Leelabai, Rajaram Lokhande and Sunil Jadhav and further transaction and transfer of land between Rajaram Lokhande, Sunil Jadhav and present petitioners is illegal. Leelabai Sable has no right, title to dispose of the suit land in favour of Rajaram Lokhande and Sunil Jadhav. He further submitted that the respondents are the co-owners having undivided share in the property and therefore, no injunction can be granted against the co-sharers of the property. He submitted that in the order, the learned trial Judge has considered all the documents and discussed the value of these sale deeds, so also has considered the entry of name of Gangaram Sable in 7/12 extract in the other rights column and, therefore, this Petition is to be dismissed.

5. Perused the plaint, orders passed by the learned trial Court Judge and learned District Judge. The petitioners are claiming their ownership and possession on the basis of registered sale deed with Rajaram Lokhande and Sunil Jadhav. Rajaram Lokhande and Sunil Jadhav had come in possession and got the title in the suit property by way of earlier registered sale deed, which was executed between them and Leelabai Daulat Sable, who succeeded in the property from Daulat Sable. These registered sale deeds cannot be doubted at this stage unless some concrete and reliable facts *prima facie* are brought on record. The petitioners/plaintiffs have produced documentary evidence of electricity bills, sugarcane factory bills, which *prima facie* show their possession. After going through these orders and the documents which are produced herein, the respondents have not shown their possession of suit property. The suit is filed for simplicitor injunction and therefore, the petitioners have to prove only their lawful possession while praying such injunction. The respondents are claiming their title and possession on two grounds, firstly, it is an ancestral property so they have undivided share in the property; and secondly, the share of Daulat Sable is bequeathed to them by way of will executed on 1st August, 1989. Be that as it may, the observations made by the learned

District Judge in respect of legality of the registered sale deed and on the point of possession is not consistent with law and also the facts, so that order is set aside and order passed by the learned trial Judge is hereby confirmed. It is made clear that granting of temporary injunction will not affect any other right of the respondents of seeking relief before the appropriate Court for the ownership and title in the suit property.

6. Rule is made absolute in terms of prayer clauses (a) and (b).

7. The learned counsel for the respondents submitted that this Court has granted interim order of status quo on 18th December, 2013 and it may be continued, as the respondents wants to challenge this order before the Hon'ble Supreme Court.

8. The learned counsel for the petitioners object to the extension of the stay.

9. Considering the submissions of the learned counsel for the respondents, interim order of status quo is extended by 6 weeks from today.

(MRIDULA BHATKAR, J.)