

M/s. Storevell Logistic & Warehousing Corporation through its authorized partner S. G. Gabrani Vs.	...	Petitioner
Kondiba Chhaban Walke and others	...	Respondents

Mr. Amit B. Borkar for Petitioner.
Mr. Sudhir S. Hardikar for Respondents No.1 and 2.

CORAM : R. G. KETKAR, J.
DATE : JANUARY 24, 2017

P.C. :

Heard Mr. Borkar, learned Counsel for petitioner and Mr. Hardikar, learned Counsel for respondents No.1 and 2 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'defendant No.2', has challenged the judgment and order dated 13.10.2014 passed by the learned District Judge-14, Pune in Miscellaneous Civil Appeal No.427 of 2013. By that order, the learned District Judge allowed the Miscellaneous Civil Appeal preferred by respondents No.1 and 2, hereinafter referred to as 'plaintiffs', and quashed and set aside the judgment and order dated 19.09.2013 passed by the learned trial Judge below exhibit-5 in Regular Civil Suit No.355 of 2013. The learned District Judge issued injunction restraining defendants No.1 and 2 from causing any sort of interference in the joint possession of the plaintiffs over the suit land, more particularly described in the plaint till decision of the Suit.

3. In support of this Petition, Mr. Borkar strenuously contended that there are 69 co-sharers. Out of 69 co-sharers, 67 co-sharers have transferred their interest in favour of defendants No.1 and 2. He

submitted that the learned trial Judge rejected the application. The learned District Judge allowed the appeal. He has taken me through paragraph 14 of the impugned order. In paragraph 14, the learned District Judge noted that on 30.03.1999, Dinkar Walke, Shahaji Walke, Suman Darekar, Kamal Nawale, Malan More, Surekha Darekar and Sunita Tapkir had executed irrevocable registered Power of Attorney in favour of Uttam Walke, defendant No.10(A). Another irrevocable registered Power of Attorney dated 30.03.1999 was executed by Chhaban Walke, father of plaintiff No.1 in favour of defendant No.6(C), Arun Baban Walke. Plaintiff No.2, Sitaram executed registered irrevocable Power of Attorney in favour of defendant No.3(C), Suresh Vishnu Walke. Defendants No.3(C) and 4(C), Dashrath Baban Walke cancelled irrevocable Power of Attorney on 20.01.2005 and thereafter they executed sale deed of the entire land in favour of defendant No.2. The learned District Judge noted that if the registered Power of Attorney was cancelled, defendants No.3(C) and 6(C) cannot execute sale deed in favour of defendant No.1. Mr. Borkar submitted that the learned District Judge however did not consider whether the irrevocable registered Power of Attorney could be revoked simply by issuing public notice or by unregistered document. The learned District Judge observed that whether by unregistered document, registered irrevocable Power of Attorney can be cancelled or not, can be gone into at the stage of trial and not at interlocutory stage. He submitted that as Power of Attorney created interest in favour of defendants No.3(C) and 6(C), the same could not have been revoked by unregistered instrument. He further submitted that out of 69 co-sharers, 67 co-sharers have already transferred their interest in favour of defendants No.1 and 2. The learned District Judge however held that plaintiffs are in joint possession and therefore, injunction is required to be issued against defendants No.1 and 2.

4. On the other hand, Mr. Hardikar submitted that though the learned trial Judge rejected the application exhibit-5, in paragraph 29, the learned trial Judge held that plaintiffs have made out prima facie case. The learned trial Judge rejected the application only on the ground that in Regular Civil Suit No.5767 of 2012 filed by Sunita Walke, application exhibit-5 for similar relief was allowed on 07.11.2012. The learned trial Judge was, therefore, of the view that the plaintiffs have already got relief in that Suit as the present Suit filed on the basis of the same cause of action, the plaintiffs are not entitled to interim injunction though they have made out prima facie case. He further invited my attention to paragraph 26 of the trial Court's judgment wherein the learned trial Judge noted that on the basis of the Power of Attorney dated 26.03.1999, sale deed was executed in favour of defendant No.1 in the year 2005. At that time, Chaban Mauti Walke, Dinkar Bajirao Walke, Baban Maruti Walke and Bapu Maruti Walke were not alive. The sale deed also shows that defendant No.6(C), Arun Walke had signed the sale deed on behalf of Baban Maruti Walke as Constituted Attorney, who was not alive. The learned trial Judge observed that the sale is deed signed by the power of attorney after demise of donee and it is operative and effective only during the life time of the doner. He, therefore, submitted that no case is made out for interference.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. Plaintiffs have instituted Suit inter alia for partition and separate possession of their 1/30th share; for declaration that the sale deed dated 15.07.2005 is void ab initio in favour of defendant No.1 and is not binding on plaintiffs' share; for declaration that the agreement dated 07.10.2010 entered into by and between defendants No.1 and 2 is void ab initio and is not binding on plaintiffs' share and for perpetual

injunction. As noted earlier, the learned trial Judge rejected the application only on the ground that in the Suit filed by Sunita Walke, injunction was issued against defendants No.1 and 2 on 07.11.2012, and therefore, plaintiffs have got relief of injunction in that Suit. In paragraph 26, the learned trial Judge observed thus,

“26. In the present facts also on the basis of power of attorney dated 26.03.1999 the sale deed to defendant No.1 is executed in the year 2005. At that time Chaban Maruti Walke, Dinkar Bajirao Walke, Baban Maruti Walke and Bapu Maruti Walke were not alive. The sale deed shows that Arun Walke has signed on behalf of Baban Maruti Walke as constitutional power of attorney who was not alive. The sale deed signed by power of attorney after demise of donee. It is operative and effective only during life time of donor.”

6. After considering the material on record, in paragraph 28, the learned trial Judge observed that actual possession is with plaintiff and members of Walke family and is not handed over to defendant No.1 on the basis of sale deed dated 25.07.2005. In paragraph 29, the learned trial Judge specifically recorded a finding that plaintiffs have made out a prima facie case. The application was however rejected on the ground that in view of the order dated 07.11.2012 passed below exhibit 5 in Regular Civil Suit No.5767 of 2012 possession of the plaintiffs is already protected. In other words, though the learned trial Judge rejected the application for injunction, it recorded a finding that plaintiffs are in possession and that they have made out a prima facie case.

7. As far as the appellate Court is concerned, the learned District Judge has also held that plaintiffs have established their joint possession. It is also relevant to note that the learned District Judge issued injunction on 13.10.2014 and this injunction was not stayed during the pendency of this Petition. In view thereof, I do not find any case is made out invocation of powers under Article 227 of the Constitution of India.

Hence, Petition fails and the same is dismissed reserving liberty to defendants No.1 and 2 to file application for disposal of the Suit expeditiously. If such application is made, the learned trial Judge will pass appropriate order. The learned trial Judge will also decide the Suit on the basis of evidence on record and on its own merits, in accordance with law, uninfluenced by the observations made in the impugned order. Order accordingly.

(R. G. KETKAR, J.)

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