

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.317 OF 2016
WITH
CIVIL APPLICATION NO.1375 OF 2015
WITH
CIVIL APPLICATION NO.252 OF 2016

Girish Shivram Pawar

...Appellant

Versus

Ibrahim Abdul Rahman & Ors

...Respondents

Mr VY Sanglikar, for the Appellant.

None for the Respondents.

CORAM: G.S. PATEL, J

DATED: 15th June 2017

PC:-

1. Since September 2016 or even earlier, the Respondents to this Appeal have been absent. On 5th June 2017 I gave them a final opportunity by placing the matter today saying that it would be finally disposed of today, and would not be further adjourned.

2. The Appellant is the original Plaintiff in Suit No.1230 of 2009. He challenges a judgment and order dated 21st October 2013. By that order the Trial Court dismissed the Plaintiff's Notice of Motion. In that Notice of Motion, the Plaintiff sought an order of

restraint against the Defendant from dispossessing the Plaintiff and from obstructing the Plaintiff's construction and development work. The Suit itself sought a declaration in respect of a portion of the property and it was the Plaintiff's case that in the document of transfer of title there was a misdescription. The Schedule mentioned CTS No.169 instead of CTS No.172.

3. Before the Trial Court, the Defendants alleged that CTS No.172 was never part of the property sold to the Plaintiff. They said that the property was first owned by one Abdul Rehman Ibrahim. By a Conveyance Deed of 18th October 1971, he transferred his interest to 10 persons. These 10 persons partitioned the property. This included the suit land. The Land Records were changed and Mutation Entries were effected. One Ms Malan Shivaji Deokar held this property on partition and the Plaintiff claims title in turn from Malan Deokar. The Defendants said there was no Rectification Deed or any attempts to correct these errors. They also said that Malan Deokar had filed a Suit No.147 of 2011 against the Plaintiff disputing the transfer of title. Mr Sanglikar for the Appellant points out that the Suit filed by Malan Deokar was dismissed for want of prosecution on 27th August 2015. He also states that the Plaintiff's predecessor in title has confirmed the transfer of title to the Plaintiff by a Registered Conveyance Deed dated 20th October 2014. The Plaintiff has thus perfected his title. There is no question therefore of the Defendants interfering with the Plaintiff's possession and rights over the property.

4. Although it is true that the withdrawal of the Suit and the conveyance to which I have just referred are both subsequent to the

impugned order, in my view, the Plaintiff must be entitled to relief. In any case even leaving aside the Conveyance Deed of the withdrawal of the Suit, equity demanded that the parties be preserved in *status quo* and a time limited injunction should have been granted. There was no dispute that the Plaintiff was in possession at the relevant time.

5. The appeal succeeds. The impugned order is set aside. There will be an injunction in terms of prayer clause (a) of Civil Application No.252 of 2016, which reads as follows:

“(a) That pending the hearing and final disposal of the AO, this Hon’ble Court be pleased to pass order and injunction restraining the Respondents and Opponents, their servants, agents, representatives, any person/s claiming through and under them from dispossessing and/or interfering with peaceful use, occupation, possession of the Applicant-Appellant in respect of suit property or any part thereof.”

6. The order will continue pending the final disposal of the Suit, and, should the Plaintiff fail, for 12 weeks thereafter.

7. The Appeal and the Civil Applications are disposed of in these terms with no order as to costs.

(G. S. PATEL, J.)