

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3106 OF 2016

BANUBAI SHIVDAS PATIL
VERSUS
SONUBAI VASANT PATIL AND OTHERS

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Advocate for the Petitioner : Shri Shah Subodh P.
Advocate for the Respondents : Shri Deshmukh N. E..

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 13th February, 2018

Per Court:

1 The Petitioner (Banubai Patil), original Plaintiff in Special Civil Suit No.61/2015, is aggrieved by the order dated 16.10.2015 passed by the Trial Court rejecting application Exhibit-5 and refusing temporary injunction to the Plaintiff. The Petitioner/ Plaintiff is also aggrieved by the judgment of the Appellate Court dated 11.01.2016 by which, Miscellaneous Civil Appeal No.72/2015 filed by the Petitioner has been rejected.

2 The learned Advocate for the Petitioner has strenuously criticized the impugned orders. On the basis of the record, it is contended that the Plaintiff as well as all the Defendants are married real/ biological sisters and each one of them are residing in their marital homes. The

father of these sisters received a particular share of the property owing to partition. The Plaintiff contends that the said father subsequently gave his share to Defendant No.1 (Sonubai). Since Sonubai was in need of money, she entered into the agreement to sell dated 14.03.1997. The said agreement was drawn on Rs.20/- stamp paper and is said to bear the signatures of the Plaintiff and Defendant No.1. The witnesses to the said agreement to sell are the other sisters who had no objection, is the contention.

3 It is further strenuously contended that on the strength of the agreement to sell, the Plaintiff-Banubai was put in possession by Defendant No.1-Sonubai and since then the Plaintiff-Banubai has been holding the possession of the agricultural land, is cultivating the said land and is also harvesting the crops. It was in 2015, which is after about 18 years of the agreement to sell, that Banubai had preferred Special Civil Suit No.61/2015 praying for specific performance of the contract and for permanent injunction. The grievance is that merely because the revenue entries indicate the ownership of Sonubai that both the Courts below have got carried away and have declined to look into the details of the pleadings and documents on record.

4 It is pointed out that the sisters have sworn the affidavits before the Trial Court indicating that Banubai is now in possession of the suit land. Before the Appellate Court, the real brother of Banubai and

Sonubai, namely, Shamrao has sworn an affidavit stating that Sonubai continues to be in possession of the suit land and Banubai was never put in possession. He has also denied that he has signed on the agreement to sell. It is further pointed out that during the pendency of this Writ Petition, as Shamrao passed away, his legal heirs have sworn an affidavit saying that their father has wrongly stated in the affidavit that Banubai is not in possession and that is out of a grudge that he held against her. In fact, Banubai is in possession.

5 It is quite obvious on the issue of possession of the suit land, that the Plaintiff-Banubai relies upon the agreement to sell. The Trial Court as well as the Appellate Court discarded the said agreement to sell on the ground that it is executed on insufficient stamp paper and it is not a registered document.

6 The learned Advocate for the Petitioner has relied upon the judgment of this Court in the matter of Sanjay Shrikrishanji Somani vs. Vishnupant Shankarrao Shahane, 2007 (6) Mh.L.J. 550, wherein, this Court has concluded in paragraph 11 that while granting temporary injunction, the Trial Court has to see whether, the contentions set out in the plaint are proved by an affidavit or otherwise. It is also concluded that the Trial Court has to, prima facie, appreciate the documents on record and it is not a stage at which the Court can exercise the power of impounding the documents.

7 The learned Advocate for the Petitioner has then relied upon the judgment of this Court in the matter of Shamrao Ganpat Chintamani vs. Kakasaheb Laxman Gorde, 2008 (2) Mh.L.J. 819. In paragraphs 9, 13 and 16, this Court has concluded that while considering the case for grant of temporary injunction, the Court can refer to the documents which are produced on record without seeking a formal proof and at the time of trial, the Court has to consider the documents. While assessing a prima facie case, the Court has to record a finding as to whether, the Plaintiff has established a prima facie possession over the suit property.

8 While drawing these conclusions, this Court has noted the facts in Shamrao Chintamani case (supra), which are as under:-

- (a) The execution of the Sale Deed dated 23.04.2004 was admitted by the Defendant, which recites the delivery of possession of the suit property.
- (b) The affidavits were filed by the adjoining neighbourers, who were owners and possessors of the adjoining lands, stating that the Plaintiff was in possession.

9 In the instant case, the Plaintiff-Banubai contends that as there was an agreement to sell between two sisters, Banubai did not insist upon further registering any Sale Deed and seeking formal execution of such a sale deed. Banubai also did not approach the revenue authorities

for seeking change in the mutation entries so as to carryout the mutation entry in her favour on the basis of the agreement to sell.

10 This Court, in the matter of Shrikant R. Sankanwar and others vs. Krishna Balu Naukudkar, 2003 (3) BCR 45, has concluded that the mutation entries do not decide the right, title or interest of any agriculturist or landlord and they are meant for fiscal purposes. While drawing this conclusion, this Court has held that the best piece of evidence has to be considered while changing the mutation entry and the registered Sale Deed can be considered to be one amongst such a good piece of evidence.

11 Now, that this matter is in the court and the parties are litigating against each other, the affidavits have been filed by the sisters, brother and the legal heirs of the said brother, wherein, divergent stands have been taken. As has been held in Shamrao Chintamani case (supra), the affidavits of the adjoining landlords could be material. The Plaintiff-Banubai has not produced any evidence in the form of an affidavit of the adjoining landlord.

12 The revenue records indicate that Defendant No.1-Sonubai continues to be in physical possession of the suit property. Revenue entries are in the name of Sonubai. In this backdrop, it cannot be said that the Plaintiff-Banubai is in actual possession of the suit land keeping in view that there is neither a revenue entry in favour of Banubai nor an affidavit

of the adjoining land owner. The sisters and brother inter-se have put forth divergent affidavits and that would be a matter of evidence as to whether, the real brother of Banubai and Sonubai was truthful in his affidavit filed before the Appellate Court or whether, his legal heirs have put forth a truthful version in their affidavit.

13 The Honourable Supreme Court, in the matter of Agnigundala Venkata Ranga Rao vs. Indukuru Ramachandra Reddy, 2018 (1) Mh.L.J. 94. (SC), has concluded that while granting an injunction, it needs to be seen as to whether, the actual possession has been established or not and whether, such possession can be said to be legal or not.

14 Considering the above, I do not find that the concurrent findings of the Courts below could be termed as being perverse or erroneous. This Writ Petition being devoid of merit is, therefore, dismissed.

15 Needless to state, I am sure that the Trial Court, while deciding the suit finally, would consider the effect of the oral and documentary evidence available before it in the light of the pleadings and would decide the said suit on it's own merits.