

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9114 OF 2014
(Madhubala Ulhas Rane Vs. Sarswati Ishwar Bhardwaj)

Mr.N.C.Garud, Advocate for the petitioner.
Mr.Govind Kulkarni h/f Mr.A.S.Kale, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 10/01/2018

PER COURT :

1. The petitioner has challenged the order dated 17/08/2013 passed by the Trial Court by which application Exhibit 76 filed by the petitioner/plaintiff seeking a direction that the defendant be directed to deposit the amount of compensation received from the Acquiring body, has been rejected.

2. The petitioner is also challenging the judgment dated 13/03/2014 passed by the Appellate Court concluding that MCA No.54/2013 is not maintainable.

3. The strenuous submission of the petitioner is that as the defendant had executed an agreement to sale in her favour on 30/12/1999 and the petitioner had later on paid Rs.86,000/- out of

the consideration amount of Rs.1,25,000/-, it has led to the handing over of the possession to the petitioner. When a registered sale deed was to be executed and the defendant declined, the petitioner preferred RCS No.76/2012.

4. During the pendency of the suit, the defendant entered into an agreement with regard to the acquisition of the land by the State Government and for re-rehabilitation. The compensation awarded by the Special Land Acquisition Officer has also been received by the defendant. The entire compensation of Rs.1,27,000/- should have been paid to the petitioner as she had become the owner of the suit land inclusive of that portion of the land which was acquired.

5. Learned Advocate for the petitioner further submits that the application Exh.76 was preferred by the plaintiff seeking a direction that the compensation amount received by the defendant should be deposited in the Court. By the impugned order dated 17/08/2013, the Trial Court has rejected the application. The Appellate Court has dismissed the appeal by the impugned order dated 13/03/2014, by concluding that the order of the Trial Court was passed u/s 151 of the CPC and hence an appeal is not maintainable.

6. In my view, the decision in the suit would bind all the parties and if the suit is decreed, the plaintiff would be entitled to such reliefs as would be granted by the Trial Court. Whether the petitioner would succeed or not is a matter of speculation. Compensation has been awarded to the defendant since that portion of the land which he claims to be the owner, has been acquired. A registered sale deed has still not been executed and as such, whether the plaintiff would be entitled to a declaration of ownership over the suit property and consequentially over that portion of the land which has been acquired, would be a matter of adjudication by the Trial Court. By speculating that the plaintiff would succeed, the defendant cannot be deprived of the compensation amount which he has received. Needless to state, if the suit is decreed, the Trial Court would pass consequential orders so as to redress the grievance of the plaintiffs.

7. In the above backdrop, I do not find that the impugned order of the Trial Court would be termed as being perverse or erroneous.

8. Considering the above, I am not going into the aspect as to whether the appeal filed by the petitioner was maintainable or not. The said issue is therefore left open, considering the fact that the Appellate court has concluded that an order passed u/s 151 of the

CPC cannot be an appealable order.

9. This petition is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)