

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 14066 OF 2017

RATNAKUMAR MOHNIRAJ CHANDRATRE
VERSUS
NAMDEO RAMRAO AUTADE

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Advocate for Petitioners : Mr. R.S. Deshmukh h/f Mr. Abhishek Kulkarni

Advocate for Respondents : Mr. A.D. Kasliwal h/f Mr. C.R. Thorat

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CORAM : V. K. JADHAV, J.
DATED : 13th FEBRUARY, 2018

PER COURT:-

1. With consent of the parties, heard finally at admission stage.
2. The petitioner-original defendant has challenged the order dated 09.08.2017 passed by the Joint Civil Judge, Senior Division, Vaijapur below Exh.5 in Special Civil Suit No. 22 of 2017 and the said order is confirmed by the learned District Judge-1, Vaijapur in Misc. Civil Appeal No. 32 of 2017 by order dated 10.10.2017.
3. The respondent-plaintiff has instituted the Special Civil Suit No. 22 of 2017 for specific performance of contract and decree of perpetual injunction. The respondent-plaintiff is seeking decree of specific performance of contract on the basis of oral agreement of alienation of land to the extent of 8 acres for total consideration of Rs.6,40,000/-. It has been contended in the plaint that out of that

amount, a cheque for an amount of Rs.25,000/- has been issued to the petitioner-defendant and accordingly possession of land under the agreement has been delivered to the respondent-plaintiff on the day of oral agreement itself.

4. The petitioner-defendant has strongly resisted the suit by filing written statement, wherein it has been contended that in view of hand loan advanced to respondent-plaintiff, by the petitioner-defendant, the respondent-plaintiff has repaid the said amount by the cheque since demonetization process was going on and by taking undue advantage of the same, the respondent-plaintiff prepared false story of oral agreement of sale of the said property. It has also been contended in the written statement that the said property is worth Rs.15,00,000/- to Rs.20,00,000/- per acre and the entire property as per the oral agreement shown to have been alienated for total consideration of Rs.6,40,000/- only. The respondent-plaintiff has also filed an application seeking order of temporary injunction to protect his possession over the suit property and the learned Judge of the trial court has allowed the said application by the impugned order dated 09.08.2017. Being aggrieved by the same, the petitioner-defendant has preferred Misc. Civil Appeal No. 32 of 2017 and the learned District Judge-1, Vijapur has confirmed the order passed by the trial court below Exh.5, by impugned order dated

10.10.2017. Hence, this writ petition.

5. Learned counsel for the petitioner submits that both the courts below have committed error in accepting even *prima facie* case of oral agreement. The suit property is ancestral property of the petitioner-defendant and is in possession since more than 50 years. The said property is worth Rs.15,00,000/- to Rs.20,00,000/- per acre. It has been specifically denied by the petitioner-defendant that the entire suit property is sold by an oral agreement for consideration of Rs. 6,40,000/-. Learned counsel submits that the lower appellate court has accepted the possession of the respondent-plaintiff over the suit property on the basis of photographs which is unheard of. Learned counsel submits that there is absolute no evidence to substantiate even *prima facie* case of the respondent-plaintiff.

6. Learned counsel for the respondent-plaintiff submits that the respondent-plaintiff has filed affidavits of the persons, who were present in the meeting held on 2.12.2016 when the oral agreement was finalized. Learned counsel submits that on the same day, the respondent-plaintiff has given cheque of Rs.25,000/- as an earnest amount and the petitioner-defendant has not denied the said payment. Learned counsel submits that the respondent-plaintiff has

also filed affidavits of adjoining land holders to substantiate his case about possession over the suit land and the courts below therefore, have rightly granted order of injunction in favour of the respondent-plaintiff. No interference is required. There is no substance in the writ petition.

7. I do not find that the respondent-plaintiff has made out any prima facie case for issuance of order of temporary injunction in his favour. Except the bare words of the respondent-plaintiff, there is no documentary evidence to substantiate his case. However, on the basis of oral agreement, the respondent-plaintiff claims that the possession of the suit property came to be delivered to him on the date of oral agreement itself.

8. So far as the doctrine of part-performance as per Section 53-A of Transfer of Property Act is concerned, before the said doctrine could be applied, there must be a contract in writing to transfer the immovable property for consideration and it must be signed on behalf of transferor. The terms of the same ought to have been ascertained with reasonable certainty. The transferee to be put in possession and in case he is already been put in possession, he must continue in possession and the said act must be done in furtherance of contract. It further appears that both the courts below have not considered the

same and even ignored the provisions of Section 17 (1-A) r.w. Section 49 of the Registration Act.

9. Furthermore, the petitioner-defendant has raised certain ground about the prevailing market price of the suit property on the date of alleged oral agreement. It is also pertinent to note that even though theory of the respondent-plaintiff is accepted as it is, on the basis of only earnest amount of Rs.25,000/- against the total consideration of Rs.6,40,000/-, the possession of 8 acres of land was handed over to him on the date of oral agreement itself, I do not think that the respondent-plaintiff has made out prima facie case. The balance of convenience certainly lies in favour of the petitioner-defendant. I find that the approach of both the courts below is very casual in nature. Both the courts below have believed the theory of possession strangely on the basis of the photographs placed before the courts. It further appears that revenue record is in favour of the petitioner-defendant, however, the trial court as well as the lower appellate court have not considered the same. In the result, I proceed to pass the following order:-

O R D E R

I. The writ petition is hereby allowed with costs.

II. The impugned order dated 09.08.2017 passed by the Joint Civil Judge, Senior Division, Vaijapur below Exh.5 in Special Civil Suit No. 22 of 2017 and the judgment and order dated 10.10.2017 passed by District Judge-1, Vaijapur in Misc. Civil Appeal No. 32 of 2017 are hereby quashed and set aside. Application Exh.5 is hereby rejected.

III. Interim status quo order passed by this Court stands vacated.

(V. K. JADHAV, J.)

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