

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

WRIT PETITION NO. 528 OF 2018

SHAIKH HASAN SHAIKH HUSAIN
VERSUS
SHARADKUMAR PURUSHOTTAM DEOLE AND OTHERS

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Advocate for the Petitioner : Shri Chavan Sudhir K..
Advocate for Respondents 1 and 2 : Shri S.G.Chapalgaonkar.
AGP for Respondent 5 : Shri V.S.Badakh.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 25th January, 2018

Per Court:

1 The Petitioner, original Defendant No.6 in the Counter Claim, is aggrieved by the judgment and order dated 30.11.2017 delivered by the Appellate Court, by which, Miscellaneous Civil Appeal No.9/2017 filed by the original Plaintiffs has been allowed and an injunction under Order 39 Rules 1 and 2 of the Code of Civil Procedure, has been granted by directing the Petitioner not to proceed with further construction over the suit plot till the decision of the suit.

2 The learned Advocate for the Petitioner/ original Defendant No.6 submits that the construction is of a tin shed with certain bricks walls and that is meant for his residence and business purposes.

3 I have considered the strenuous submissions of the learned

Advocate for the Petitioner, the learned AGP on behalf of Respondent No.5 and the learned Advocate on behalf of Respondent Nos.1 and 2.

4 In the light of the submissions of the learned Advocates, I have perused the petition paper book. There are two documents, which are exhibits 76 and 77 filed before the Trial Court, which pertain to the partition of shares between the Party No.1 comprising of Chandrakant Deole, Shrikant Deole and Shashikant Deole, who are the vendors of the Petitioner and the Party No.2 comprising of Sharadkumar Deole and Arvind Deole. The Petitioner contradicts the veracity of these documents Exhibits 76 and 77.

5 It appears from these two documents that the land admeasuring 2 Acres was converted into Non Agricultural property by following the due procedure and 15 plots were marked in the said land. Five plots were handed over to the Party No.1 and five plots were handed to the Party No.2. Remaining five plots were kept as common property of both the parties.

6 The contention of the Respondents herein is that Plot Nos.1, 12, 13, 14 and 15 were common plots. Plot Nos.2, 3, 6, 7 and 8 were handed over to the Party No.1, who are vendors of the Petitioner. Plot Nos.4, 5, 9, 10 and 11 were handed over the Party No.2, who are Respondent Nos.1 and 2 in this petition.

7 The dispute is as regards Plot Nos.2 and 12. The contention of

the Respondents is that when Plot No.12 is included in five plots, which are commonly owned by both the parties, the said Plot No.12 will not find place in those five plots, which have been allotted to the Party No.1. It is, therefore, contended that there is typographical error in the partition deed Exhibit-76, which indicates a series of plots in favour of the Party No.1 as Plot Nos.12, 3, 6, 7 and 8. Had Plot No.12 been allotted to the share of the Party No.1, the sequence would have been Plot Nos.3, 6, 7, 8 and 12 and Plot No.12 would not have found place in those five plots, which have been commonly owned by the parties.

8 There is no dispute that the Petitioner has commenced the construction on Plot No.12 on the belief that the Party No.1 has sold the portion of Plot No.12 to the Petitioner/ Defendant No.6.

9 While hearing the matter on 24.01.2018, I had called upon the parties to state as to whether, the Petitioner is willing to file an affidavit undertaking that he would give up the plot and constructed area to the other side, if he fails in the litigation and on this condition, he would construct the plot and also deposit Rs.3 lac before the Trial Court.

10 The learned Advocate for the Petitioner submits, on instructions, that the Petitioner is ready and willing to tender such an undertaking as well as deposit the money.

11 Shri Chapalgaonkar, learned Advocate for Respondent Nos.1 and 2, has opposed the said proposal contending that once the

construction is erected on Plot No.12, it would take decades for the litigation to attain finality. Defendant Nos.1 and 2, who are real brothers, have crossed 75 years of age and may not see the day when the litigation would attain finality. He further submits that the construction, if permitted, is likely to be a threat to their security and cause an irreparable harm. Instead, he submits that the suit can be disposed of within six months and Respondent Nos.1 and 2 assure the Court that they would not seek a single adjournment on any count.

12 It is settled law that when it comes to permitting the construction during the pendency of the suit, the construction undertaken by way of a public project should not be stalled and such construction can be subject to the result in the suit since the aggrieved party, upon succeeding, would be entitled to seek compensation from the State. (see Mahadeo Savalaram Shelke and others vs. Pune Municipal Corporation and another, 1995 (3) SCC 33).

13 In the matters of Shiv Kumar Chadha vs. Municipal Corporation of Delhi and others, 1993 (3) SCC 161 and Dalpat Kumar and another vs. Prahlad Singh and others, 1992 (1) SCC 719, the Honourable Supreme Court has concluded that an injunction is normally to be granted only if it can be concluded that an irreparable harm is likely to cause to a litigating side. An exception to this rule is with regard to public projects

and the Honourable Supreme Court reiterates that a public project should not be stalled.

14 The Appellate Court, by a detailed judgment impugned in this petition, has concluded that Plot No.12, if at all is sold to the Petitioner/Defendant No.6, it would amount to a fraud being played by the Party No.1 if it is proved that Plot No.12 was under the joint ownership of both the parties. Since this serious dispute is in question, the Appellate Court restrained the Petitioner from proceeding with the construction over the suit plot.

15 I find that RCS No.347/2012 is pending before the learned Civil Judge, Senior Division, Gangakhed. More than five years have already lapsed and if the said suit is directed to be decided within a particular time frame, further difficulties of the litigating sides and complications in the litigation could be averted.

16 Considering the above, this Writ Petition is disposed of with a direction to the learned Civil Judge, Senior Division, Gangakhed that RCS No.347/2012 shall be decided as expeditiously as possible and in any case, on or before 31.08.2018.

17 The litigating sides shall render their cooperation to the Trial Court. If the Trial Court finds that adjournments are sought on unreasonable and trivial grounds, it would be at liberty to reject such applications and if need be, impose costs on the party seeking such

adjournments.

18 Needless to state, the conclusions of the Appellate Court as well as this Court are on the basis of a prima facie appreciation of the material available on record and are restricted to the issue of grant of injunction. The Trial Court shall, therefore, decide the suit on its own merits without being influenced by the observations made by the Appellate Court as well as by this Court.

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(RAVINDRA V. GHUGE, J.)