

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

WRIT PETITION NO. 2315 OF 2018

BABURAO NARAYAN DESHMUKH
VERSUS
BABURAO HIRACHAND INDE AND OTHERS

...
Advocate for the Petitioner : Ms.Bodke Patil Poonam V.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 12th March, 2018

Per Court:

1 The Petitioner is aggrieved by the order of the Trial Court dated 06.05.2017 by which, application Exhibit-5 filed by the Plaintiffs has been allowed and temporary injunction has been clamped on the Petitioner and other Defendants by which, they are restrained from alienating or creating third party interest in the suit property till the decision of the suit. The Petitioner is also aggrieved by the judgment and order dated 31.10.2017 delivered by the Appellate Court by which, Miscellaneous Civil Appeal No.54/2017 filed by the Petitioner, has been dismissed.

2 The learned Advocate for the Petitioner has strenuously criticized the impugned orders and submits that the Petitioner/ Defendant No.2 is the purchaser from the earlier owner, who has acquired the said

property by a Will Deed. Considering the same, the Petitioner cannot be said to have illegally acquired the property and hence, no injunction could have been clamped against the Petitioner and other Defendants.

3 I find that the Trial Court as well as the Appellate Court have noticed that Defendant No.1, who claimed to be in possession of the property, has not been able to indicate as to how he acquired the right to possess the said property and title. The Will Deed or Gift Deed, as is the story put forth by Defendant No.1, was not placed on record. Defendant No.2, who is the Petitioner herein, claimed to be a bonafide purchaser, but could not indicate details about his purchase. There was no dispute that the Plaintiffs were not in possession of the said property and hence, they were seeking an injunction. The Trial Court, as well as, the Appellate Court have, therefore, concluded that as the property is in possession of Defendant Nos.2 to 5, there is every likelihood that they may create third party interest during the pendency of the suit so as to frustrate the claim of the Plaintiffs.

4 It is strenuously canvassed by the learned Advocate for the Petitioner that the effect of the Relinquishment Deed issued by the forefathers of original Defendant No.1 has not been considered by the courts below. Based on such Relinquishment Deed, it can be seen that Defendant No.1 acquired the legal title to the property and based on such title, he has sold the property to the Petitioner. She further submits that

the Petitioner does not desire to alienate the suit property. Hence, no injunction is required.

5 At a prima facie stage, without there being oral and documentary evidence on record, I do not find that these aspects could have been considered by the Trial Court.

6 Considering the reasons assigned by the Courts below, I do not find that the impugned orders could be termed as being perverse or erroneous. Merely because a different view can be taken, would not be a ground for causing interference in the impugned orders.

7 This Writ Petition, being devoid of merit is, therefore, dismissed.

kps

(RAVINDRA V. GHUGE, J.)