

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION No. 5522 OF 2017

Nayan Ashutosh Patil

...Petitioner

Vs.

Vinod Vinayak Deshpande and Anr.

...Respondents

Mr. Bhushan Walimbe, Advocate for the Petitioner

CORAM : K.K. TATED , J.

DATE: MAY 03, 2018

P.C.

1. Heard Mr. Walimbe, learned counsel appearing on behalf of the Petitioner.

2. By this petition, which is filed under Article 227 of the Constitution of India, the Petitioner – Original Defendant is challenging the order dated 29th June, 2017 passed by the Learned District Judge -1, Karad in Misc. Civil Appeal No. 20 of 2011 confirming the order dated 30th March, 2010 passed by the Joint Civil Judge, Senior Division, Karad below Exhibit '5' in Regular Civil Suit No. 274 of 2010.

3. For the sake of convenience the parties are called as Petitioner – Original Defendant, Respondent No.1 – Original Plaintiff No.1 and Respondent No.2 – Original Plaintiff No.2 as stated in the suit No. 274 of

2010.

4. In the present proceeding, the Plaintiffs have filed a Regular Civil Suit No. 274 of 2010 for an order of injunction restraining the Original Defendant from disturbing their possession in respect of the suit property i.e. Survey No. 75 (Old No. 748/2) admeasuring 1 Hectare, 48 Ares, situated at Mouje Wing, Taluka Karad, Dist. Satara. In that suit, the Plaintiffs have preferred an application below Exhibit '5' for an order of injunction restraining the Defendant from disturbing their peaceful possession. That application was decided by the Trial Court after hearing both the sides by order dated 30th March, 2010. The Joint Civil Judge, Senior Division, Karad restraining the Defendant from obstructing the Plaintiffs' possession in respect of the suit property till final hearing and disposal of the said suit.

5. Being aggrieved by the said order, the Defendant preferred an application before the District Court, Karad. The Appellate Court also dismissed the Defendant's Misc. Application No. 20 of 2011 by impugned judgment dated 29th June, 2011. Hence, the present writ petition.

6. The main contention raised by the Defendant – Petitioner before this Court that the Appellate Court has failed to consider the fact that Original Plaintiff No.1 – owner fo land filed application below Exhibit 53 for

withdrawal of the suit. He submits that when the application filed by Plaintiff No.1 for withdrawal of the suit, nothing survives in the entire proceeding. In support of his contention, he relied on paragraph 8 of the order passed by the Appellate Court.

7. The learned counsel for the Defendant submits that while passing the judgment and order, the Appellate Court has considered the sale deed dated 19th August, 2015 executed in favour of Plaintiff No.2. He submits that there was no question of considering the subsequent events at the time of deciding the application below Exhibit '5' for injunction. He further submits that the Appellate Court has failed to consider the fact that the Defendant purchased the undivided portion of the suit property from Plaintiff No.1. Therefore, there is no question of passing any injunction order against him. The learned counsel for the Defendant submits that the impugned order is required to be set aside on this ground.

8. It is to be noted that the writ petition as it is filed by the Original Defendant is not maintainable at all. In the present proceeding, the Trial Court has passed injunction order against the Petitioner -Defendant below Exhibit '5' in Regular Civil Suit No. 274 of 2010 and that was challenged by the Petitioner before the Appellate Court. The Appellate Court dismissed the Petitioner's appeal. By this petition under Article 227 of the Constitution of

India, the Petitioner is challenging the concurrent finding of facts passed by both the Courts below. Apart from that, it is to be noted that both the Courts below considered the fact that the suit filed by the Plaintiffs for injunction and if the interim relief is not granted, nothing will survive in the suit. Plaintiff No.2 relied on the sale deed dated 19th August, 2015 executed in his favour by Plaintiff No.1. The contention raised by the Defendant in respect of Exhibit '53' i.e. application filed by Plaintiff No.1 for withdrawal of the suit that can be considered by the Trial Court at the time of final hearing and disposal of the matter, on the basis of sale deed dated 19.th August, 2015 executed in favour of the Plaintiff No.2. Moreover, Plaintiff No.2 is in possession of suit property for last more than twenty years.

9. Considering both the impugned orders passed by the Trial Court, I do not find any reason to entertain the present writ petition under Article 227 of the Constitution of India.

10. Hence, writ petition stands dismissed.

11. No orders as to costs.

[K.K. TATED, J.]