

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

WRIT PETITION NO. 3044 OF 2019

Issak s/o Fakroddin Shaikh .. Petitioner

versus

Rabanbee w/o Ahmed Deshmukh
and another .. Respondents

Mr Mahesh P. Kale, Advocate for petitioner

CORAM : SUNIL P. DESHMUKH, J.

DATE : 4th March, 2019

ORDER :

1. Heard learned counsel for petitioner.
2. The appellate court in paragraphs no. 8, 9 and 10 of its judgment has observed thus :

" 8. It is the case of plaintiff that the plaintiff has received 1 Hectare 38 Ares land from survey no. 55/B in execution of judgment and decree passed in R.C.S. No. 221/1078. The possession note dated 27.01.2005 is on record. The plaintiff has filed the revenue record, which mentions the name of plaintiff for 1 Hectare 38 Ares in survey No.55/B and her name is also mentioned in possession column.

9. The defence of the defendants is that the plaintiff is not in possession of the said property. The plaintiff has received 1

Hectare 38 Ares land of the suit survey already possessed by one Ahmed Salim Deshmukh, Putlabai Kamble and Miyakhan Deshmukh. The shares, which the defendants have mentioned, were prior to the judgment of partition suit. The possession note executed on behalf of the Collector in execution of judgment and decree passed in said suit is clear that the plaintiff has received possession of the suit land with boundaries, which tallies with the suit land described in plaint and thereby, she became exclusive owner and possessor of it.

10. The defendant No. 1 was not the party in R.C.S. No.184/2009 filed by the plaintiff against Jaitunbee i.e. wife of defendant No.1. In said suit injunction was passed against Jaitunbee not to disturb the possession of plaintiff over the suit land. The defendant No. 1 is claiming possession over the suit property on the basis of exchange-deed, which is dated 24.01.2006. In said suit the competent court has declared that it is not binding upon the plaintiff. As the defendant No. 2 was not party to the suit, the judgment and decree passed in it is not binding upon him. "

3. Reasons given by the appellate court do not appear to be fallible on any ground and the discretion appears to have been exercised on sound judicial principles.

4. Having regard to that the two courts have concurrently at interlocutory stage of the matter with reference to the material on record considered that present respondent no. 1 –

original plaintiff has *prima facie* case and balance of convenience is in her favour as well as other aspect namely, she would suffer irreparable loss and accordingly trial court has granted injunction and appellate court has confirmed the same in the appeal preferred by present petitioner.

5. It does not appear that petitioner has been able to make out any case to take exception to such concurrent discretionary exercise. Petitioner does not appear to have made out any case to dabble into the discretion exercised by trial court and confirmed by appellate court.

6. Writ petition is, therefore, rejected.

SUNIL P. DESHMUKH
JUDGE

pnd/-