

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

WRIT PETITION NO. 8290 OF 2018

Ramesh Kondaji Raut
Age: 45 years, Occu: Agril.,
R/o Kolhar (Bk), Tq. Rahata,
Dist. Ahmednagar

... PETITIONER
(Orig. Deft.No.3)

Versus

1. Sonubai Baburao Waditke
64 years, Occu: Household & Agri.,
R/o Tamnar Akhada, Tq. Rahuri,
Dist. Ahmednagar
2. Chandrabhaga Baburao Waditke
Age: Major, Occu: Household,
R/o At Post Ozar, Tq. Sangamner,
Dist. Ahmednagar
3. Gangubai Baburao Waditke
Age: Major, Occu: Household,
R/o C/o Sabaji Dagdu Mane,
At Post Khirdi, Tq. Shrirampur,
Dist. Ahmednagar

... RESPONDENTS
[Resp No.1 Orig.Plaintiff.
No.2 & 3 Orig.Deft.Nos.
1 & 2]

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Mr. R. A. Tambe, Advocate for petitioner.
Mr. N. B. Jadhav, Advocate for respondent No.1.
Mr. Shaikh M.A. Jahagirdar, Advocate for respondent No.2.
Mrs. Manjushri Shendage-Narwade, Advocate for respondent No.3.

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CORAM : R. G. AVACHAT, J.

Date of reserving Judgment : 03rd OCTOBER, 2019
Date of pronouncing Judgment : 05th NOVEMBER, 2019

J U D G M E N T :-

. Rule. Rule made returnable forthwith. Heard learned counsel for appearing parties finally, by consent.

2. This writ petition, under Article 227 of the Constitution of India, has been filed for the following relief :

“B. Issue writ of certiorari or any other appropriate writ, order or directions in the like nature of certiorari, thereby quashing and setting aside the order dated 06.07.2018 passed by the learned District Judge-1, Shrirampur in M.C.A. No.2/2015 thereby confirming the order dated 05.01.2015 passed by the learned Civil Judge, Senior Division, Shrirampur below Exhibit 5 in R.C.S. No. 100/2013 and for that purpose issue necessary orders.”

By impugned order dated 05.01.2015, the petitioner-defendant No.3 has temporarily been restrained from obstructing respondent No.1-Plaintiff's possession over the suit land. The said order has been affirmed in the appeal, being Miscellaneous Civil Appeal No.2/2015.

3. Factual matrix :

Respondent No.1-plaintiff filed suit, being Regular Civil Suit No.100/2013, for declaration to the effect that the sale-deeds executed by respondent Nos.2 and 3 (defendant Nos. 1 and 2) in favour of the petitioner-defendant No.3, are not binding on her. Relief of perpetual injunction, restraining the petitioner and respondent Nos. 2 and 3 from obstructing her possession over the suit land, has also been asked for.

4. The agricultural land, comprised in *Gut* No.65 belonged to late Baburao Waditke. He passed away on 14.09.2007. He was survived by his mother and three women, who claimed to be his widows. They are respondent Nos. 1 to 3 herein. It appears that, names of these respondents have been recorded in the revenue record of the said land by virtue of succession as widows of late Baburao. It is nobody's case that late Baburao had married three wives before 1956.

5. The petitioner-defendant No.1 claimed that late Baburao had agreed to sell him the land comprised in *Gut* No.65. It was an oral agreement. In his last days, Baburao was not keeping well, the petitioner had therefore paid him Rs.1,90,000/- to meet medical expenditure and day to day needs as well. Respondent Nos. 1 to 3 acknowledged the transactions between late Baburao and the petitioner and therefore, respondent Nos. 1 and 3 agreed to sell their share in the land *Gut* No.65 to the petitioner. Agreement for sale was therefore executed on 04.09.2007. A separate possession receipt has also been executed handing over possession of the suit land to the petitioner. Respondent No.2 executed sale-deed on 27.07.2011 and transferred her right, title and interest in the land *Gut* No.65 to the petitioner. Similarly, Gangubai-respondent No.3 executed sale-deed of her share in the said land in favour of petitioner on 22.08.2011.

It is the case of petitioner that Kantilal Waditke also sold his right, title and interest in the land Gut No.65 to him. As such, the petitioner claims to have been in exclusive possession of the entire land comprised in Gut No.65.

6. The petitioner filed counter claim for specific performance of agreement for sale dated 04.09.2007 executed by the plaintiff-respondent No.1 in petitioner's favour. Necessarily, the counter claim pertained to respondent No.1's share in the land Gut No.65.

7. Mr. Tambe, learned counsel for the petitioner would submit that both the Courts below passed the impugned orders in complete disregard to the documentary evidence. The stay continued pending hearing of the miscellaneous appeal. On dismissal of the miscellaneous appeal, the learned Judge was pleased to continue the order of stay for a period of two weeks. On filing of the present writ petition the petitioner has been granted interim relief. All these facts indicate that the petitioner has been in possession of the suit land. Learned counsel took me through the various documents indicating transactions entered into between him and the respondents. Learned counsel has relied on the following authorities :

- (i) *Nirav Deepak Modi Vs. Najoo Behram Bhiwandiwala & ors – 2012(2) ALL MR 809;*
- (ii) *Subhash Dhanraj Sankla Vs. Kajkhushroo Alias Kaki Phiroze Noble – 2014(1) ALL MR 311;*
- (iii) *Mahila Ramkali Devi and others Vs. Nandram (D) Thr. LRs and others – 2015 AIR (SC) 2270.*

8. Mr. Jadhav, learned counsel representing respondent No.1 would, on the other hand, support the impugned orders. He has reiterated the reasons given by both the Courts below.

Mr. Shaikh M.A. Jahagirdar, learned Advocate for respondent No.2 and Mrs. Manjushri Shendage-Narwade, learned Advocate representing respondent No.3 also resisted the writ petition.

9. In exercise of jurisdiction under Article 227 of the Constitution of India, this Court is not inclined to interfere with the impugned orders. Both the Courts below have exercised their discretion. No case has been made out for interfering with the discretionary relief granted in favour of respondent No.1.

10. Late Baburao was the owner of the land *Gut* No.65. He passed away in September, 2007. The agreement for sale executed on 04.09.2007 by respondent Nos. 1 and 3 is on record. This agreement is yet to be proved before the trial Court, same is however looked into so as to find whether the Courts below have erred in exercising their

discretion in favour of respondent No.1-plaintiff. The terms of the agreement acknowledge that late Baburao and the petitioner had cordial relations *inter se*. Baburao was suffering from Cancer. The petitioner had therefore paid him Rs.1,90,000/- to meet medical expenses. The recitals in the agreement, undoubtedly indicate that no penny was paid to respondent Nos. 1 and 2 at the time of execution of the agreement for sale. The terms of agreement indicate that both Sonabai and Gangubai – respondent Nos. 1 and 3 agreed to sell their respective share in the land Gut No.65 to the petitioner. The sale-deed was agreed to be executed within a period of one year from execution of the agreement. The said period expired on 03.09.2008. The petitioner filed counter-claim on 17.07.2014 against respondent No.1 for specific performance of agreement for sale executed by respondent No.1 in his favour. The counter claim, *prima-facie*, appears to have been filed after the period of limitation.

11. Be that as it may, under the agreement of sale dated 04.09.2007, the petitioner has not been put in possession of any of the portion of the land in Gut No.65. On the same day, the possession receipt is shown to have been executed by both the respondent Nos. 1 and 3, indicating the petitioner to have been put in possession of land Gut No.65. It is not known as to why separate possession receipt came to be executed

while an agreement for sale had been executed on the same day. The possession receipt has also to be proved before the trial Court. Respondent No.1 said to have been put her thumb impression on both the documents. The same indicates that she is illiterate. It is also indicated that all was not well between Sonabai and Gangubai. Then it is a question as to how both of them come together to execute the agreement for sale and possession receipt.

12. Gangubai, who is party to both the aforesaid documents, executed the sale-deed on 22.08.2011, transferring her right, title and interest in the land *Gut* No.65, a copy of sale-deed is on record. Recitals thereof indicate that the petitioner was put in possession on Gangubai's share on the day on which the sale-deed was executed. The same indicates that the parties to the sale-deed do not acknowledge execution of the possession receipt. Had really the possession receipt been executed, a reference thereto would have been there in the sale-deed. Name of the petitioner did not figure in a possessory column of the 7/12 extract of the land *Gut* No.65 from the day of execution of the possession receipt.

Then, there is sale-deed executed by Chandrabhaga, on 27.07.2011, transferring her right, title and interest in the land *Gut*

No.65 to the petitioner. Chandrabhaga is not party to the agreement for sale and the possession receipt executed on 04.09.2007.

13. It appears that Chandrabhaga (respondent No.2) had filed application for declaring her to be the widow of late Baburao and consequently, a person entitled to inherit the estate of left, behind by Baburao. It was the application moved in the year 2008. Both, Sonabai and Gangubai (respondent Nos. 1 and 3), respectively, appeared in the said proceeding. The Court declared Sonabai (Plaintiff-respondent No.1) to be the widow of late Baburao. The plaint averments indicate that the petitioner herein was very much aware of the said proceeding and he had appeared as a witness for one of the three women, who had claimed to be the widows of late Baburao. Still, the petitioner ventured to enter into transaction of sale with Chandrabhaga and Gangubai (Respondent Nos. 2 and 3). True, the finding recorded in the said proceedings would not be final who one of the three is a widow of late Baburao could only be decided during trial of the suit filed by respondent No.1. The petitioner appears to have recognized respondent Nos. 1 to 3 to be widows of late Baburao and entered into transactions with them. Necessarily, at his own risk. Sonabai, *prima-facie* appears to be the widow of late Baburao. Respondent Nos. 2 and 3, therefore, do not have right, title and interest in the land *Gut* No.65 and authority to

transfer the same in favour of the petitioner. It needs no mention that no one can give better title than he himself has. Respondent No.1-plaintiff, *prima-facie* appears to be a person entitled to inherit the estate of late Baburao. The possession receipt under which she is said to have parted with possession in favour of the petitioner, has not been recognized, since, reference thereto is not found in the sale-deed executed by Gangubai on 26.11.2012. Chandrabhaga (Respondent No.2), *prima-facie* did not have anything with her to transfer the same to the petitioner. As such, the petitioner is not found to have been in possession of the suit land *Gat* No.65. The trial Court, therefore, rightly enjoined him from interfering with as possession of the plaintiff-respondent No.1. The appellate Court too affirmed the said order in the aforesaid factual backdrop.

14. No interference is called for with the impugned orders. The writ petition, therefore fails, the same is dismissed. Rule discharged.

15. At the request of learned counsel for the petitioner, interim relief to continue for a period of three weeks.

[R. G. AVACHAT, J.]

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