

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4970 OF 2015***

Smt. Parvati Dnyanu Chougule & Ors. ... Petitioners

Vs

Smt. Sushila Baburao Chougule & Ors. ... Respondents

***ALONG WITH
WRIT PETITION NO. 4971 OF 2015***

Smt. Parvati Dnyanu Chougule & Ors. ... Petitioners

Vs

Shri. Dinkar Tukaram Gote ... Respondent

Shri. Shriniwas S. Patwardhan, Advocate for Petitioner in both petitions.

CORAM : SANDEEP K. SHINDE J.
DATE : June 4th, 2019

ORDER :

1. Heard Mr. Patwardhan, Learned Counsel for the petitioner in both the petitions.

2. Petitioners in Writ Petition No. 4970 of 2015 are the plaintiffs in Regular Civil Suit No. 79 of 2013, pending in the Court of Civil Judge, Junior Division, Kolhapur, wherein they are seeking

declaratory decree that the Sale Certificate issued in favour of Mr. Dinkar Tukaram Gote (Defendant No. 4) in Regular Darkhast No. 5 of 2004 concerning Gat Nos. 1671 and 1679 and consequent Sale Deed, is illegal and not binding on them. Such other prayers are for partition and separate possession of the suit properties, which includes Gat Nos. 1671 and 1679. Plaintiffs would assert their possession in Gat Nos. 1671 and 1679 and therefore sought relief of temporary injunction during the pendacy of the suit. The Trial Court as well as the Appellate Court declined to grant temporary injunction. Thus, aggrieved by the orders, they have preferred Writ Petition No. 4970 of 2015.

3. In Writ Petition No. 4971 of 2015, petitioners are challenging the order dated 18.09.2014 passed in Miscellaneous Civil Appeal arising from the proceedings in Regular Civil Suit No. 66 of 2013, filed by Mr. Dinkar Tukarm Gote. This suit is for perpetual injunction against the petitioners instituted by Mr. Dinkar Tukaram Gote. The suit property is Gat no. 1671 and 1679. Pending the suit, Mr. Dinkar Tukaram Gote requested the Trial Court to restrain the petitioners from interfering and obstructing his possession in the suit land, the Learned Trial Judge as well as the Appellate Court by order of injunction, restrained the petitioners from disturbing the possession of Mr. Dinkar Tukaram Gote in the land Gat No. 1671 and 1679.

4. In the aforesaid facts and circumstances, the petitioners have preferred these two writ petitions concerning land 1671 and 1679.

5. Smt. Parvati Dnyanu Chougule, petitioner and one of the plaintiffs in Regular Civil Suit No. 79 of 2013 is mother of Baburao. The decree of maintenance was passed against Baburao in the year 2004. Baburao did not satisfy the decree and therefore his wife in execution of the decree attached land Gat No. 1671 and 1679. This order was passed in Regular Darkhast No. 5 of 2004. The order of attachment dated 18.04.2006 passed in said Darkhast was challenged in Writ Petition No. 29 of 2010 before this Court. Thus, vide order dated 08.03.2010, this Court clarified that the order of attachment is executable only to the extent of undivided share of Baburao (who was defendant no. 1 in the said Darkhast).

6. It appears, the order passed by this Court in Writ Petition No. 29 of 2010 was not brought to the notice of the Executing Court and resultantly entire Gat No. 1671 and 1679 was sold in execution by public auction. Mr. Dinkar Gote purchased Gat No. 1671 and 1679 in the auction in December, 2012. It is under these circumstances, Mr. Dinkar Gote is asserting his right and possession in the suit Gat No. 1671 and 1679.

7. The petitioners herein instituted the suit aforesaid and would contend that Mr. Dinkar Tukaram Gote cannot claim and or assert his right in Gat No. 1671 and 1679 more than undivided share of Baburao therein. On this premise, the petitioners / plaintiffs sought declaration that Sale Certificate and consequent Sale Deed executed in favour of Mr. Dinkar Tukaram Gote of Gat No. 1671 and 1679 is not binding on them.

8. Learned Trial Judge while dealing with the application filed in the petitioner's suit, declined to grant the relief but in the suit instituted by Mr. Dinkar Tukaram Gote, the petitioners are restrained from interfering and obstructing the possession of Mr. Dinkar Gote in these two lands.

9. Be that, as it may, in both the suits, impugned orders were passed in December, 2014, which are subsisting till date. It is submitted across the bar that in one suit issues are already framed and in another suit filed by Mr. Dinkar Gote, it is at the stage of framing additional issues.

10. Thus, taking into consideration the peculiar facts of the case and that since the orders impugned were passed in the year 2014, I am not inclined to interfere with the orders passed in both the suits and in Miscellaneous Civil Appeals decided on 02.12.2014. However,

in view of the order passed by this Court in Writ Petition No. 29 of 2010, the Learned Trial Judge is requested to conclude the trial in Regular Civil Suit No. 79 of 2013 and in Regular Civil Suit No. 66 of 2013, preferably on or before 31st March 2020. It is clarified that this Court has not expressed any opinion on the merits of the matter. With these directions, both writ petitions are disposed of.

(SANDEEP K. SHINDE, J.)