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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.477 OF 2019

Rajashree Rajendra Jangam	..Petitioner.
V/s.	
Mangal Baburao Sutar & Ors.	..Respondents.

Mr.N.J.Patil I/b. Amey N.Patil for the petitioner.

Mr.Chetan G.Patil with Mandar Bagkar for respondent Nos.1 to 5.

CORAM : M.S.SONAK, J.

DATE : APRIL 1, 2019

ORAL JUDGMENT

Heard Mr.N.J.Patil, learned counsel for the petitioner and Mr.Chetan Patil, learned counsel for respondent Nos.1 to 5.

2. Challenge in this petition is to the order dated December 20, 2018 by which learned Appeal Court had allowed the appeal instituted by respondents and set aside the judgment and order dated September 8, 2017 made by the learned trial Judge granting injunction in favour of the petitioner herein. In terms of the said injunction, the respondents were restrained from dispossessing the petitioner, otherwise than by due process of law.

3. The record in the present matter very clearly discloses that the petitioner had filed a Civil Suit on the basis of sale deed dated May 12, 2015 executed by original defendant No.5 in favour of the petitioner-plaintiff. The Civil Suit was instituted on July 24, 2017. On this date, the authority under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 had already made an order dated June 20, 2017 setting aside the sale deed. The petitioner had preferred an appeal against the said order but there was no interim relief in operation.

4. According to me, the Appeal Court has quite correctly held that the order dated June 20, 2017 made by the Sub-Divisional Officer (SDO) was very relevant and vital fact. Yet, the petitioner chose to suppress this fact and on the basis of such suppression even secured an ad-interim relief of status quo on August 3, 2017. The settled position in such matters is that, the party who approaches the Court and seeks interim or ad-interim protection must be candid in such cases and must disclose all relevant fact and relevant documents. Upon such disclosure, the petitioner should have as well contended that the order of the SDO was erroneous and on the basis of the said order, the petitioner ought not to have been prejudiced. However, the petitioner chose to suppress this relevant and vital document. For all these reasons, the Appeal Court quite correctly vacated the injunction granted by the learned trial

Judge in this matter.

5. Mr.N.J.Patil submits that ultimately, learned trial Judge has considered the order dated June 20, 2015 made by the SDO. The record reveals that the learned trial Judge has only noted the contentions of the respondents on the aspect of suppression. However, learned trial Judge did not decide on this contention at all. The issue in such matters is not whether the learned trial Judge has ultimately discussed the effect of the SDO's order. The main issue is whether the petitioner could have granted injunction after having suppressed the vital document from the Court. According to me, the learned Appeal Court has quite correctly held that the petitioner was not entitled for any injunction after having suppressed such a relevant and vital document from the Court. Incidentally, the petitioner's appeal against the order of SDO dated June 2015 has also been dismissed.

6. Accordingly, for all the aforesaid reasons it cannot be said that there is any error in the view taken by the Appeal Court. The petition is, therefore, required to be dismissed and is hereby dismissed.

7. The interim order granted earlier is hereby vacated.

8. However, it is made clear that none of the observations in the orders made by the trial Court, the Appeal Court and for that matter by this Court need influence the learned trial Judge while deciding the suit on merits. Even the issue of suppression need not be considered at

the stage of final hearing of the suit now that the document is on record. The relief of injunction is denied to the petitioner, because, on the basis of suppression, the petitioner had secured ex-parte order. It is the duty of the petitioner to have disclosed the documents, including the SDO's order which was absolutely vital in the matter.

9. With the aforesaid clarification, this petition is dismissed. There shall be no order as to costs. Ad-interim order stands vacated.

10. All concerned to act on the basis of an authenticated copy of this order.

11. At this stage, Mr.N.J.Patil, learned counsel for the petitioner requests for continuation of ad-interim order for four weeks. Since this is a case where the petitioner has suppressed vital document, it is not possible to accede to this request. Hence the request is rejected.

(M.S.SONAK, J.)