

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7113 OF 2018

Manik Janardhan Kulkarni

Age : 67 yrs. Occ.: Agriculturist

R/o. At post – Falwani, Tal Malshiras

Dist. Solapur.

...Petitioner

Versus

Kamal Manik Awatade

Age : 55 years, Occu. : Household

R/o. Omshivshakti, Chawl No.5,

Maharashtra Nagar, Mankhurd, Near

Panvel Highway, Mumbai.

...Respondent

WITH

WRIT PETITION NO. 10098 OF 2018

Manoj Manik Kulkarni

Age : 34 yrs. Occ.: Agriculturist

R/o. At post – Falwani, Tal Malshiras

Dist. Solapur.

...Petitioner

Versus

1. Manik Janardhan Kulkarni

Aged : 68 years, Occu. : Agriculturist

2. Maya Manik Kulkarni

Aged : 61 years, Occu. : Agriculturist

3. Rahul Manik Kulkarni

Aged : 32 years, Occu. Agriculturist

All Respondent No.1 to 3 are residing
at post Falwani, Tal. Malshiras,

Dist. Solapur.

...Respondents

Mr. Amit Karande, for the Petitioner in WP No.7113/18.

Mr. Manoj A. Patil, for the Petitioner in WP No.10098/18.

Mr. Shankar Katkar, I/b Manish A. Devkar, for Respondent
no.4.

CORAM: N. J. JAMADAR, J.

DATED: 2nd AUGUST, 2019

Oral Judgment :-

1. Rule. Rule made returnable forthwith and, with the consent of the Counsels for the parties, heard finally.
2. As the genesis of the transaction leading to institution of the proceedings before the lower Courts and institution of these petitions before this Court is one and the same, both the petitions can be conveniently disposed of by a common order.
3. The petitioner Manik, in Writ Petition No.7113 of 2018, is the plaintiff in Regular Civil Suit No.1273 of 2015 and the respondent Smt. Kamal is the defendant thereto. The petitioner Manik averred in the said suit that the sale-deed dated 28th May, 2014 executed in favour of the respondent – defendant purporting to convey agricultural land admeasuring 80 Are, out of Gat No.422/2B/2B/1 is false, fabricated, without any consideration and does not bind the plaintiff.
4. The petitioner Manoj, in Writ Petition No.10098 of 2018, is the son of Shri. Manik (the petitioner in Writ Petition No.7113 of 2018). Manoj instituted a suit bearing No.546 of 2014 against Manik, Smt. Maya, his mother, and Rahul, his brother, for partition and separate possession of his share in

the alleged joint family properties, bearing Gat No.422/2B/2B/1 and 617/2A, situated at Falavani, Taluka Malshiras, District Solapur. Smt. Komal, respondent no.4 herein was impleaded as a party defendant to the said suit.

5. In Regular Civil Suit No.1273 of 2015, Manik preferred an application (Exhibit 5) to restrain Smt. Kamal from causing obstruction to the peaceful possession and cultivation of the suit land i.e. Gat No.422/2B/2B/1, more particularly described in paragraph 1A of the plaint, on the strength of the alleged false and bogus sale-deed dated 28th May, 2014 executed in favour of the defendant. In the written statement, Smt. Kamal raised a counter-claim and also preferred an application (Exhibit 14) contending that the plaintiff has been causing obstruction to the possession and enjoyment of the agricultural land admeasuring 80 Are sold to her under the sale-deed dated 28th May, 2014 and, thus, sought an order of temporary injunction restraining the plaintiff from causing obstruction to her possession and enjoyment of the said portion of the suit land, described in paragraph 1B of the plaint.

6. Both the applicants were heard and determined by the learned Civil Judge, Junior Division, Malshiras, by the order

dated 18th February, 2017. The learned Judge found that the claim of Shri. Manik that the suit land was a joint family property did not find any support in the documents placed on record. On the contrary, there was material to indicate that Manik had purchased the suit land from one Chimbai in the year 1983 and, thus, the suit land appeared to be a self-acquired property of Manik. It was further noticed that there was no justifiable material to lend support to the claim of Manik that the sale-deed executed in favour of the defendant Smt. Kamal on 28th May, 2014 was bogus and without consideration. In contrast, the record revealed that before execution of the conveyance Manik had obtained permission of the competent Rehabilitation authorities for the said alienation. Since the defendant Smt. Kamal was found to have been put in possession of the suit land 1B, under the registered sale-deed dated 28th May, 2014, and the plaintiff had demonstrated animus to disturb the possession of the defendant over the suit land 1B, the trial Court was persuaded to reject the application of the plaintiff Manik for temporary injunction, and instead restrain the plaintiff from causing obstruction to possession and enjoyment of

defendant Smt. Kamal over the suit land 1B, by allowing the application (Exhibit 14).

7. Being aggrieved, the petitioner Manik preferred Misc. Civil Appeal No.8 of 2017. The learned District Judge-1, Malshiras found that the learned Civil Judge has correctly exercised the discretion to restrain the plaintiff Manik from causing obstruction to the possession and enjoyment of the defendant over the suit land 1B, and thus the appeal came to be dismissed by judgment and order dated 14th March, 2018. Being further aggrieved, the petitioner Manik has invoked the writ jurisdiction of this Court.

8. In Regular Civil Suit No.546 of 2014, the petitioner Manoj, filed an application (Exhibit 44) praying for an order of temporary injunction restraining defendant no.4 Smt. Kamal from causing obstruction to the possession and enjoyment of the suit land bearing Gat No.422/2B/2B/1 on the premise that Smt. Kamal by taking undue advantage of the order of temporary injunction passed in her favour on the application (Exhibit 14) in Regular Civil Suit No.1273 of 2015 was threatening to dispossess Shri. Manoj and other co-sharers from the entire suit land.

9. The learned Civil Judge was persuaded to reject the said application for temporary injunction by order dated 27th February, 2017 on the premise that there was no, *prima facie*, material to demonstrate that the suit land was a joint family property. Defendant no.4 has been put in possession of 80 Are land out of Gat No.422/2B/2B/1 from the date of execution of the sale-deed. Thus, applying the parameters for grant of temporary injunction, in the backdrop of the aforesaid facts, the trial Court recorded the finding that the plaintiff failed to make out a *prima facie* case, neither the balance of convenience was in favour of the plaintiff, nor irreparable loss would be caused to the plaintiff in the event of rejection of the prayer for temporary injunction.

10. The appeal preferred by Manoj bearing Misc. Civil Appeal No.12 of 2018 thereagainst came to be dismissed by the learned District Judge-1, Malshiras, concurring with the finding recorded by the learned Civil Judge that there was no material to show that the suit property was the joint family property. It was further noted that when Manik, the father of Manoj, had purchased the agricultural land bearing Gat No.422/2B/2B/1, in the year 1983, both Manoj and his

brother Rahul were yet not born. Manoj has, thus, assailed the said order in Writ Petition No.10098 of 2018.

11. Heard Mr. Karande, the learned Counsel for the petitioner in Writ Petition No. 7113 of 2018, Mr. Patil, the learned Counsel for the petitioner in Writ Petition No.10098 of 2018 and Mr. Katkar, the learned Counsel for Smt. Kamal, contesting the respondent in both the petitions.

12. The learned Counsels for the petitioners have urged that the trial court as well as the Appellate Court have misconstrued the nature of the claim of the plaintiffs. The Courts below have committed grave error in dismissing the applications for temporary injunction without considering the case of the plaintiffs that on the strength of the sale-deed dated 28th May, 2014, the defendant (Smt. Kamal) was causing obstruction to the possession and enjoyment of the plaintiffs, over the portion of the land bearing Gat No.422/2B/2B/1, beyond 80 Are land, which has been allegedly sold to defendant on 28th May, 2014. It was further submitted that even if the case of defendant is taken at par, the defendant has no right, title and interest over the area of Gat No.422/2B/2B/1 beyond the 80 Are land sold to her in pursuance of sale-deed dated 28th May, 2014. Consequently,

the defendant cannot cause any obstruction to the possession and enjoyment of the plaintiffs over the portion of the suit land more particularly described in paragraph 1A of the plaint, in Regular Civil Suit No.1273 of 2015.

13. The learned Counsel for defendant – respondent, would urge that the respondent claims proprietary title over the portion of the suit land on the strength of the sale-deed dated 28th May, 2014. The plaintiffs have been thus rightly restrained by an order of temporary injunction from causing obstruction to the possession and cultivation of the said 80 Are land by the defendant.

14. In the aforesaid backdrop, it becomes abundantly clear that in any event, respondent – defendant can claim right, title and interest only over the area admeasuring 80 Are out of Gat No.422/2B/2B/1 purchased in pursuance of the sale-deed dated 28th May, 2014.

15. The learned trial Court and the Appellate Court have proceeded on the premise that since there is no material to demonstrate that the suit lands are joint family properties, the plaintiffs are not entitled to the discretionary relief of temporary injunction in the face of the registered sale-deed in favour of defendant. To the extent of the suit land

admeasuring 80 Are, purchased by the defendant, the exercise of the discretion by the trial Court as well as the Appellate Court not to grant injunction in favour of the plaintiffs and, conversely, restrain the plaintiffs from causing obstruction to the possession and enjoyment of the defendant over the said area is impeccable. To this extent, no interference is warranted in the orders impugned in both the petitions.

16. The question as to whether defendant – respondent, on the strength of the sale-deed 28th May, 2014, caused obstruction to the possession and enjoyment of the rest of the suit land by the plaintiffs has, however, not been addressed by the trial Court and Appellate Court. Apart from the pleadings, the plaintiffs have also not made any endeavour to place on record any material to show that defendant – respondent has caused obstruction to their possession, enjoyment and cultivation of the rest of the portion of the suit land, bearing Gat No.422/2B/2B/1.

17. In the aforesaid circumstances, it would be apposite to hold and record that the impugned orders, including the order passed by the trial Court on the application for temporary injunction (Exhibit 44) in Regular Civil Suit

No.546 of 2014, shall not be construed to entitle defendant – respondent Smt. Kamal, to cause obstruction to the possession, enjoyment and cultivation of the plaintiffs over the portion of the suit land bearing Gat No.422/2B/2B/1 beyond the area of 80 Are sold to defendant – respondent under the sale-deed dated 28th May, 2014.

18. It is further clarified that the impugned orders shall not preclude the plaintiffs from claiming the relief of injunction, in the event of obstruction to their possession and enjoyment over the portion of the suit land bearing Gat No.422/2B/2B/1, save and except 80 Are land sold to defendant – respondent.

19. Both the petitions stand disposed of in aforesaid terms.

20. Rule made absolute in aforesaid terms. No costs.

[N. J. JAMADAR, J.]