

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

SA NO.244/2019
Deepak s/o Pandurang Lohe

..VS..

Sau.Vanita w/o Vijayrao Deshpande (dead) thr. LRs. Dinesh s/o Vijayrao
Deshpande and ors

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders

Court's or Judge's Order

.....
Dr.(Mrs.) R.S.Sirpurkar, Counsel for the Appellant.
Shri Rohit Joshi, Counsel for R-1(A) to 1(C).

CORAM : V.M.DESHPANDE, J.
DATED : JULY 3, 2019.

1. Heard learned counsel Dr.(Mrs.) R.S.Sirpurkar for the appellant and learned counsel Shri Rohit Joshi for respondent No.1(A) to 1(C).
2. From submissions made before this Court, at least to following facts, there is no dispute:

(i) Suit property in question was ancestral property of Late Shri Shankar Ghate and other coparceners and in their partition suit property was allotted to share share of Shankar Ghate;

(ii) Shankar Ghate executed Agreement to Sell (Exhibit 139) on 28.9.1993 with Deepak Lohe and Dnyaneshwar and agreed to transfer his title for valuable consideration at Rs.91,000/- and out of that Rs.60,000/- were received on

the day of execution of the agreement itself;

(iii) Plaintiff-Vinita is daughter of Shankar Ghate. Respondent No.1-A to 1-C are her legal representatives. She filed a suit for possession and injunction and sought relief that the defendants be restrained from interfering her possession. In the said suit, an application for temporary injunction was filed. However, learned Judge of Trial Court rejected the said application for temporary injunction by recording a finding that the plaintiff was not in possession of suit property but the defendants were in possession of suit property;

(iv) The plaintiff filed an appeal before Lower Appellate Court challenging said finding. The appeal was dismissed. No further proceeding was carried;

(v) After getting rejected the application for temporary injunction, the plaintiff, the plaintiff substantially amended her pleadings and prayed for mandatory injunction against the defendants that she be placed in possession of suit property; and

(vi) On 11.3.2013, learned Joint Civil Judge

Junior Division, Ballarpur dismissed the suit. Learned Judge of Lower Appellate Court allowed the appeal.

3. According to learned counsel Shri Rohit Joshi, Agreement to Sell (Exhibit 139) itself was *void* document and if that be so the appellant cannot claim protection in view of provisions of Section 53A of the Transfer of Property Act and for that he relied upon a decision of the Honourable Apex Court in the case of **Ramanlal Bhailal Patel and ors vs. State of Gujarat**, reported at **(2008)5 SCC 449**. According to learned counsel, respondent No.3-Dnyaneshwar was not agriculturist within the meaning of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958. However, learned counsel fairly made a statement that appellant-Dipak was cultivating suit land as Bataidar of the plaintiff.

4. After hearing learned counsel for both the parties and after perusing impugned judgments, in my view, the present second appeal is required to be admitted and the said is **Admitted** on following substantial questions of law:

(i) Whether the Agreement to Sell (Exhibit 139) could be termed as *void* contract though Deepak one of the party to said document was agriculturist.

(ii) Whether learned Judge of Lower Appellate Court was justified in holding that the appellant

is not entitled for protection over suit field in view of Section 53A of the Transfer of Property Act?

5. Learned counsel Shri Rohit Joshi waives service for respondent No.1(A) to 1(C).

CAS No.539/2019

1. This is an application for grant of Stay.
2. Heard learned counsel Dr.(Mrs.) R.S.Sirpurkar for the applicant and learned counsel Shri Rohit Joshi for non-applicant Nos.1(A) to 1(C).
3. Looking to fact that the present appeal was involved substantial questions of law, today the present appeal filed on behalf of the appellant is admitted.
4. By the impugned judgment, learned 3rd District Judge, Chandrapur directed the appellant to hand over vacant possession of suit field within a period of 3 months from order of decree. Since the appeal is admitted and *prima facie* the appellant is in possession of suit field from year 1993, during the pendency of the present second appeal there shall be Stay to effect and operation of judgment and decree dated 3.1.2019 passed by learned 3rd District Judge, Chandrapur in Regular Civil Appeal No.51/2013.
5. The civil application stands disposed of accordingly.

JUDGE

!! BRW !!

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