

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

WRIT PETITION NO.4131/2016

Prashant Vasant Vinchurkar

Vs.

Vikas Champatrao Mokashi and others.

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

Court's or Judge's Orders.

Shri R.M.Bhangde, Advocate for petitioner.
Ms. Monika Dodani, Advocate with Advocate Rohit Joshi, for R.No.1.
Ms. Sakshi Agrawal, Advocate with Advocate S.V.Bhutada, for R.No3.

CORAM : A.S.CHANDURKAR, J.

DATED : July 02, 2019

In view of notice of final disposal issued earlier, learned counsel for the parties have been heard at length.

The challenge in the present writ petition as preferred by the defendant no.1 in Special Civil Suit No.5/2014 is to the order passed by the appellate Court dated 02.01.2016 partly allowing Misc. Appeal preferred by the plaintiff as well as Misc. Appeal preferred by the defendant no.3 and thereafter setting aside the order passed by the trial Court below Exhibit 31 that was operating in favour of the defendant no.1.

The suit as filed is for a declaration that the sale deed executed by the plaintiff in favour of the defendant no.1 on 20.06.2013 did not confer any rights on the defendant no.1 and hence it be declared as void document. Further injunction has been sought seeking to restrain the defendants from claiming any rights in the suit property. According to the plaintiff, he continues to be the owner of the suit property and the sale

deed dated 20.06.2013 is a nominal document. In that suit, the defendant no.1 along with his written statement has filed counter claim seeking a decree of permanent injunction against the original plaintiff. The defendant no.1 claims title on the strength of the sale deed dated 20.06.2013 and it is the further case that on 21.09.2013 a document seeking to transfer the said land in favour of the defendant nos. 2 and 3 came to be executed. While the plaintiff filed an application below Exhibit 5 seeking to protect his possession, the defendant no.1 filed application below Exhibit 31 seeking an order of temporary injunction against the original plaintiff. The trial Court after considering the applications as filed recorded a finding that the defendant no.1 prima facie was in possession of the suit property. On that basis the application below Exhibit 5 came to be dismissed while the plaintiff was restrained from obstructing the possession of the defendant no.1 by allowing the application below Exhibit 31. Being aggrieved, the original plaintiff as well as the defendant no.3 filed miscellaneous appeals. The appellate Court proceeded to record a finding that the sale deed executed by the defendant no.1 in favour of the defendant nos. 2 and 3 did not appear prima facie to be a void document. The same could not be treated to be a loan transaction. On that count the appellate Court set aside the order passed by the trial Court below Exhibit 31. It also refused to grant any temporary injunction in favour of the plaintiff against the defendant no.1. Being aggrieved, the aforesaid orders have been challenged by the defendant no.1 in the present writ petition.

Shri R.M.Bhangde, learned counsel for the petitioner submitted that in the light of the fact that the defendant no.1 had not received the entire consideration pursuant to the sale deed dated 21.09.2013, the title of the suit property continued with the defendant no.1. The fact that the cheque for an amount of Rs.5,00,000/- was dishonoured was not given due importance and it was clear that the title had not passed from the defendant no.1. The plaintiff having sold the suit property in favour of the defendant no.1 on 20.06.2013, it was clear that the plaintiff had no legal right to seek an order of temporary injunction against the defendant no.1. Referring to various mutation entries and the findings recorded by the trial Court in that regard, it was submitted that the appellate Court without taking into consideration those findings proceeded to reverse the order on the basis of irrelevant considerations. He further submitted that as the trial Court did not pass any order against the defendant nos. 2 and 3, the appeal preferred by them was not maintainable. In support of his submissions, the learned counsel placed reliance on the decision in ***Deva Ram and Another Vs. Ishwar Chand and Another* (1995) 6 SCC 733** and submitted that in view of the interim order passed on 31.08.2016, the petitioner continued in possession of the suit property.

Ms Monika Dodani, learned counsel for the respondent no.1-plaintiff opposed the aforesaid submissions. It was submitted that the sale deed executed by the plaintiff in favour of the defendant no.1 on

20.06.2013 was nominal in nature and the plaintiff continued in possession. The defendant no.1 had no right to alienate the suit field by executing the sale deed on 21.09.2013 in favour of the defendant nos. 2 and 3. The appellate Court had after considering the entire material on record passed the impugned order. It was however submitted that the said order to the extent relief was refused to the petitioner had not been challenged by the plaintiff.

Ms Sakshi Agrawal, learned counsel for the respondent no.3- defendant no.3 supported the impugned order. It was submitted that in view of the sale deed dated 21.09.2013 the title stood in favour of the defendant nos. 2 and 3. In view of registered sale deed standing in favour of the defendant nos. 2 and 3, the relief of injunction was rightly refused to the plaintiff.

I have heard the learned counsel for the parties at length and I have perused the documents placed on record. In the plaint, it is the case of the plaintiff that he was the owner of the property being Survey No.50 admeasuring 5 H 45 R. Since he had taken a loan from the bank and intending to repay the same, he borrowed an amount of Rs.4,25,000/- from the defendant no.1. By way of security nominal sale deed of the suit property was executed by the plaintiff in favour of the defendant no.1 on 20.06.2013. Though the defendant no.1 sought to have property re-conveyed by repaying the amount borrowed, the same was refused by the defendant no.1. On the contrary, the defendant no.1 proceeded to sell the

said land to the defendant nos. 2 and 3 on 21.09.2013. While considering the aspect of possession, it was prima-facie observed by the trial Court that though it was the case of the plaintiff that he had executed a nominal sale deed only for 5 acres of land, the sale deed indicated that the entire land admeasuring 5 H 45 R had been sold. The trial Court then noted the 7/12 extract indicating the possession of the defendant no.1 as per mutation entries dated 03.08.2013. The trial Court therefore recorded a prima facie finding that the plaintiff was not in possession and thus restrained the plaintiff from interfering with the possession of the defendant no.1. This order came to be challenged by the plaintiff as well as by the defendant no.3 by preferring two separate appeals. The appellate Court after considering the documents on record observed that the plaintiff having executed registered sale deed, he could not claim to be in possession by pleading contrary to the contents with the sale deed. The question whether the sale deed was a nominal document or not was a matter to be considered at the trial. The appellate Court therefore maintained the order passed by the trial Court below Exhibit 5. At the same time, in view of the subsequent sale deed dated 21.09.2013 in favour of defendant nos. 2 and 3, it refused to grant any relief to the defendant no.1. It was noted that the total consideration mentioned in the subsequent sale deed was Rs.9,00,000/- out of which an amount of Rs.5,00,000/- was given by way of cheque and Rs.4,00,000/- was paid by cash. The cheque in question had been dishonoured. The appellate Court however observed that since there was part payment of the sale consideration, it would not be equitable

to grant relief of injunction in favour of the defendant no.1.

The order refusing to grant any injunction to the plaintiff as confirmed by the appellate Court has not been challenged by the plaintiff. It is only the defendant no.1 who is aggrieved by the order passed by the appellate Court. The question whether the sale deed dated 20.06.2013 was nominal in nature as well as the effect of the defendant no.1 in receiving part consideration from the defendant nos. 2 and 3 with regard to subsequent sale deed dated 21.09.2013 are aspects which would have to be considered on the basis of evidence which the parties would bring on record. The miscellaneous appeal by the defendant no.3 was maintainable as it was the case of the defendant no.3 that he was in possession in view of the sale deed dated 21.09.2013. It is seen that this Court on 31.08.2016 had directed the parties to maintain status-quo and that interim order is still in operation for a period of almost three years. Any observations on the rival contentions at this stage could cause prejudice to the other parties. In the light of the fact that the suit was filed in the year 2014 and it is at the stage of recording evidence, the interests of justice would be met by passing the following order :

- i) The order of status-quo granted on 31.08.2016 shall without prejudice to the rights of the parties continue to operate during pendency of the suit.
- ii) The proceedings in R.C.S.No.5/2014 are expedited and the trial Court shall decide the same by the end of March 2020.
- iii) It is clarified that the observations made while deciding the

application for temporary injunction by the trial Court, by the appellate Court as well as by this Court would not influence the learned Judge of the trial Court while deciding the proceedings. The suit shall be decided on its own merits and in accordance with law.

iv) The writ petition is disposed of in aforesaid terms. No costs. .

JUDGE

Andurkar.