

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

WRIT PETITION NO.2749/2016

USHA NAMDEO BHAGAT
Vs.
NALINIBAI WD/O DINKAR BHAGAT 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 A.V.Band, Advocate for petitioner.
Shri J.R.Kidilay, Advocate for respondent nos.1 to 4.

CORAM : A.S.CHANDURKAR, J.
DATED : July 02, 2019

The challenge in the present writ petition is to the order passed by the appellate Court in M.C.A.No.27/2015 whereby the miscellaneous appeal preferred by the original defendants challenging the order granting temporary injunction has been allowed and the said application has been rejected.

It is the case of the petitioner that on 29.06.2015 she had purchased land admeasuring 81 R from Survey No.17/2 which was admeasuring about 2 H 18 R. After having the sale deed executed, the petitioner started cultivating the said land and on being obstructed by the respondents, she filed R.C.S.No. 60/2015 seeking perpetual injunction. According to the defendants, they continued in possession of the suit property. The execution of the sale deed was denied. It was further pleaded that on 18.10.2012 the possession of the suit land had been handed over for cultivation on contract basis.

The trial Court after considering the documents on record allowed the application for temporary injunction and restrained the

defendants from obstructing the plaintiff's possession. The appellate Court however has allowed the miscellaneous appeal by observing that in the sale deed the boundaries of the 81 R land said to be purchased by the plaintiff had not been stipulated. It was further found that the plaintiff's husband being a Talathi, the mutation entries were taken within a period of two days which was not normal. The appellate court therefore allowed the appeal and dismissed the application for temporary injunction.

Shri A.V.Band, learned counsel for the petitioner submitted that in view of the fact that a registered sale deed was executed in favour of the plaintiff and there were various mutation entries indicating the possession of the plaintiff, the appellate Court was not justified in setting aside the order of injunction. He referred various affidavits placed on record at the behest of the plaintiff and submitted that the appellate Court was not justified in reversing the order of temporary injunction.

Shri J.R.Kidilay, learned counsel for the respondents supported the impugned order. According to him, the sale deed in question did not indicate the exact portion purchased by the plaintiff as the boundaries to indicate 81 R land were not mentioned in the sale deed. The husband of the plaintiff was Talathi and within two days of execution of the sale deed the necessary mutation entries came to be taken. He referred to the documents indicating land being given on contract basis for cultivation on 18.10.2012. It was thus submitted that the appellate Court having considered the documents on record, no interference was called for.

Heard learned counsel for the parties and perused the documents on record. The sale deed in favour of the plaintiff is dated 29.06.2012. The observations as made by the appellate Court that the area to the extent of 81 R from the total land admeasuring 2 H 18 R had not been demarcated in the sale deed are correct as the boundaries to that effect can not be seen therein. The mutation entries pursuant to the sale deed dated 29.06.2012 have been taken within two days and are dated

02.07.2012. Another document referred to by the appellate Court is a letter dated 30.06.2012 issued by the petitioner's husband expressing willingness to reconvey the land in favour of the respondents. It is on this basis that the appellate Court has interfered with the order passed by the trial Court on prima-facie not finding the plaintiff in possession.

It is found that the appellate Court has given sufficient and cogent reasons for reversing the order of the trial Court. A possible view of the matter has been taken by the appellate Court in the light of documents on record. At this stage, it would not be permissible to scrutinize every document on record to arrive at another finding. In the backdrop of the aforesaid facts and as a possible view of the matter has been taken by the appellate Court, I do not find any reason to interfere with that order.

Accordingly by expediting the proceedings in the civil suit and by clarifying that the observations in this order are made only for deciding the application for temporary injunction, the writ petition stands dismissed. Pending civil application also stands dismissed. No costs.

JUDGE

Andurkar.