

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

MISC. CIVIL APPLICATION NO.973 OF 2017
IN
APPEAL AGAINST ORDER NO.56 OF 2015

Shyam Murti Raju

-vs-

Sanjay s/o Laxmanrao Kondawar and ors.

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

Court's or Judge's Orders.

Shri M. G. Bhangde, Senior Advocate with Shri S. V. Sohoni, Advocate and Shri Praveen Surange, Advocate for applicant.
Shri P. S. Wathore, Advocate with Shri Milind V. Joshi, Advocate for respondent No.1.
Shri M. R. Pillai, Advocate with Shri S. A. Ambagade, Advocate for respondent No.2.

CORAM : A.S.CHANDURKAR, J.
DATE : March 04, 2019

The original appellant in Appeal against Order No.56/2015 seeks review of the order dated 03/04/2017. By that order the aforesaid appeal that was filed challenging the order passed by the trial Court dated 08/04/2015 in the matter of grant of temporary injunction came to be dismissed.

2. On behalf of the applicant it is submitted by Shri M. G. Bhangde, learned Senior Advocate that one of the reasons that weighed with the Court for refusing the grant of temporary

injunction was the sale-deed dated 17/01/2011 which was on record at page 267 of the said appeal. It is submitted that this Court has referred to the following recitals at page 269 shown therein :

“ That Vendor is giving the above said land to the Purchaser against the earlier sale of Land bearing Kh No.178/1 admeasuring 0.61 HR of Mouza Borkhedi. ”

On the ground that there was no convincing explanation given by the plaintiff with regard to these recitals and as the Court prima facie found those recitals to have a co-relation with the disputed sale-deed, the appeal came to be dismissed. It is submitted that the aforesaid recitals do not find any place in the original sale-deed dated 17/01/2011 and hence in view of the fact that non-existent recitals in the original sale-deed have been taken into consideration while holding against the appellant, there is an error apparent on the face of record. It is also submitted that perusal of the original sale-deed by the Court while deciding the appeal could have resulted in different conclusion. Reliance has been placed on the decisions in *Moran Mar Basselios Chatholicos and anr. vs. Most Rev. Mar Poulose Athanasius and ors. AIR 1954 SC 526* and *Medical Council of India vs. Christian Medical college, Vellore and ors. (2016) 4 SCC 342.*

3. The application is opposed by Shri P. S. Wathore, learned counsel for the non-applicant No.1 and Shri M. R. Pillai, learned counsel for the non-applicant No.2. In so far as non-applicant No.1 is concerned, reference is made to the Memorandum of Understanding dated 01/06/2007 to indicate the understanding between the plaintiff and the defendant No.1 interse. It is submitted that the grounds sought to be urged for seeking review are not grounds of which cognizance can be taken so as to constitute an error apparent on the face of the record.

In so far as the non-applicant No.2 is concerned it is stated that it is not responsible for the aforesaid state of affairs. Though the said non-applicant had purchased about 67 hectares of land, the suit relates only to 0.61 R land. It is also submitted that there is no error apparent on the face of record to warrant exercise of review jurisdiction.

4. Heard the learned counsel and perused the records. Perusal of order dated 03/04/2017 indicates that one ground which has weighed with the Court is that the sale-deed dated 16/10/2009 was sought to be questioned in the year 2013 and there was absence of explanation for such delayed action. Another factor that has weighed with Court is the absence of any convincing explanation in

the recitals of the sale-deed dated 17/01/2011 as found on record page No.269 and which have been quoted hereinabove. This Court by its order dated 26/09/2018 had directed the purchaser of the aforesaid property to produce the original sale-deed dated 17/01/2011. Copy of the original sale-deed accordingly has been so produced. Its attested true copy indicates that the recitals quoted hereinabove are not found in the original sale-deed. In other words one of the factors which weighed with the Court as regards the recital on page 269 of the record is not found in the original document. In my view this would constitute a sufficient cause to exercise review jurisdiction and for that reason I am inclined to exercise such jurisdiction.

5. In the light of the observations made in the decisions relied upon by the applicant and on finding that one of the factors that weighed with the Court while deciding the appeal is found to be not in existence, the order dated 03/04/2017 is reviewed and recalled. Miscellaneous Civil Application is accordingly allowed. As a consequence, Appeal against Order No.56/2015 stand restored for its adjudication on merits. The sealed envelope containing the original sale-deed dated 17/01/2011 be retained until further orders in A.O. No.56/2015.

Civil Application No.1307 of 2017

This application shall be considered along with A.O.
No.56/2015.

JUDGE

Asmita