

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

WRIT PETITION NO.4050 OF 2016

Mangilal s/o Thawara Chavan, Taluka Pusad, District Yavatmal and ors.

-vs-

Geetai w/o Lavkush Gajbi, Taluka Pusad, District Yavatmal and anr.

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

Court's or Judge's Orders.

Shri S. V. Purohit, Advocate for petitioner.
Shri A. K. Tripathi, Advocate for respondent No.1.
Shri R. L. Khapre, Advocate for respondent No.2.

CORAM : A.S.CHANDURKAR, J.

DATE : July 16, 2019

The challenge raised in the present writ petition is to the order passed by the trial Court below Exhibit-151 by which the said application filed by the plaintiff seeking to prevent the defendant No.4 from taking part in the evidence and from cross-examining the plaintiff has been rejected.

2. The petitioners are the original plaintiffs who have filed a suit for declaration that a decree in Special Civil Suit No.19/2005 dated 29/09/2011 has been obtained by the defendant No.3 against defendant Nos.1 and 2 by practicing fraud. Further relief had been sought that the sale-deed dated 16/11/2011 executed by defendant No.1 in favour of defendant No.3 is without any consideration and hence void. During pendency of that suit on

16/11/2011 the defendant No.1 sold the suit property to the defendant No.3. Thereafter again during pendency of the suit, on 28/09/2012 the defendant No.3 sold the suit property to the defendant No.4. It is in that context that the plaintiff by relying upon the decision in *Dhanna Singh vs Baljindar Kaur AIR 1997 SC 3720* sought to prevent the defendant No.4 from leading any evidence. The trial Court by observing that the defendant No.4 had substantial interest in the suit property and the fact that he had also filed counter-claim, rejected the said application.

3. Heard Shri S. V. Purohit, learned counsel for the petitioner, Shri A. K. Tripathi, learned counsel for respondent No.1 and Shri R. L. Khapre, learned counsel for respondent No.2. The application at Exhibit-151 had been filed by relying upon the decision in *Dhanna Singh* (supra). It was held there that in the suit for permanent injunction that was filed, the defendant did not lead any evidence and during pendency of the suit he alienated the suit property. In that context it was observed that said subsequent development did not give any right to the subsequent purchaser to lead any evidence. In the present case after the defendant No.4 purchased the suit property on 28/09/2012 he proceeded to file a counter-claim seeking declaration of his title and the fact that the

Power of Attorney executed in favour of defendant No.2 was void. In the light of the fact that counter-claim was filed by defendant No.4, the ratio of the aforesaid decision would not apply to the case in hand. It is found that the trial Court was justified in relying upon the decision in *Amit Kumar Shaw and anr. vs. Farida Khatoon and anr. AIR 2005 SC 2209*. Moreover, as per the issues framed below Exhibit-42 the relief sought by the defendant No.4 in the counter-claim is required to be proved. In that view of the matter in absence of any jurisdictional error there is no case made out to interfere in writ jurisdiction. The Writ Petition is therefore dismissed with no order as to costs.

In the light of directions issued earlier in Writ Petition No.369 of 2014 the trial Court shall take necessary steps to decide the suit by the end of December 2019.

JUDGE