

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**921 APEAL FROM ORDER NO.28 OF 2020
WITH CA/7420/2020 IN AO/28/2020**

**VISHWESHWAR DAGADU VIBHUTE AND OTHERS
VERSUS
GAJENDRA GIRIDHARI VIBHUTE**

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Advocate for Petitioners : Mr. Mukul Shriram Kulkarni.
Advocate for Respondent : Mr. U.R. Awate, h/f Talekar And Associates.

CORAM : MANGESH S. PATIL, J.

DATE : 11.12.2020.

PER COURT :

Admit.

2. This is an appeal under Order XLIII of the Code of Civil Procedure by the original defendants being aggrieved and dissatisfied by the order granting temporary injunction in favour of the respondent/plaintiff by the District Court in the appeal preferred by the respondent.

3. The learned advocate Mr. Kulkarni submits that on the basis of a sale-deed executed by the father of the appellants in favour of the respondent the suit has been filed for declaration and injunction. However, as can be seen the sale-deed was only in respect of a portion admeasuring 50-Are; whereas the declaration and injunction is claimed in respect of 56-Are. He would submit that the respondent cannot be allowed to assert his right and title over the portion which he has not purchased.

4. Besides, according to the learned advocate Mr. Kulkarni, the learned Judge of the Trial Court has emphatically held that the sale-deed itself is hit by the provisions of the Prevention of Fragmentation and Consolidation of Holdings Act. It is in view of such state of affairs, prima facie the

respondent does not have any case and even the balance of convenience does not lie in his favour.

5. In addition, the learned advocate would point out from the Roznama of the Court of concerned District Judge as to how the impugned order was not pronounced after conclusion of arguments for about a year. He would therefore submit that since there is a time lag between the hearing of the arguments and pronouncement of the order, which practice has been deprecated by the Supreme Court, a serious prejudice has been caused to the appellants. He would place reliance on the decision of the Supreme Court in the case of *Balaji Baliram Mupade and another Vs. State of Maharashtra and others; 2020 SCC OnLine SC 893* .

6. The learned advocate Mr. Awate for the respondent submits that, rightly or wrongly, after the land was purchased in the year 1971, in the consolidation scheme, a portion admeasuring 56-Are is allotted to the respondent as a part of the property purchased by him. It is not the case of the appellants that during implementation of the scheme they have been allotted a lesser portion. He would further submit that the scheme having become final, the respondent being in possession of portion admeasuring 56-Are, the appellants are not entitled to obstruct his possession and challenge his title.

7. Learned advocate Mr. Awate would further point out that during pendency of the suit temporary injunction was operating in favour of the respondent and the impugned order only continues the position. He would also point out that the order of temporary injunction granted by the Trial Court was confirmed up to the High Court.

8. I have carefully gone through the papers. There is no dispute about the fact that the father of the appellants had sold a portion of land from Survey No. 2 to the extent of 50-Are. It also appears from the consolidation record that a portion admeasuring 56-Are is allotted to the respondent. True

it is that *ex facie*, some additional portion of land seems to be attached to the land of the respondent. But then, no one is disputing the consolidation scheme which has reached finality. It is not the case of the appellants that they have suffered some loss in implementation of the consolidation scheme. If this is so, whether the respondent can be said to have derived a title to the extent of 56-Are is a matter which need not trouble the Court at this juncture. Suffice for the purpose to observe that in the scheme which has been implemented long back, a portion admeasuring 56-Are is allotted to the share of the respondent.

9. During pendency of the suit temporary injunction was granted in favour of the respondent which was confirmed up to the High Court and the impugned order merely allows the position to continue till decision of the appeal before the District Court. I do not find any merit in the appeal on these grounds.

10. As far as delay in pronouncing the order by the learned District Judge, needless to state that pronouncing the order after a long gap after hearing the arguments is unbecoming of a Judicial forum. There are variety of reasons for which such a practice has been persistently deprecated by the Supreme Court as well as the High Courts. However, as can be seen from the Roznama, the learned Judge has quoted the reasons why he could not pronounce the order. In my considered view, when on an independent scrutiny no apparent illegality has been committed by the learned Judge in passing the impugned order, one need not delve further in this aspect of delay in pronouncing the order though the practice is certainly unbecoming of a Judicial Officer.

11. The Appeal is dismissed. Pending Civil Application No. 7420/2020 is disposed of.

(MANGESH S. PATIL, J.)