

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5901 OF 2017**

Kashinath Gunda Kambale & Anr.

...Petitioners

Versus

Tanaji Gunda Kambale

...Respondent

Mr. Sandeep S. Koregave for the Petitioners

Mr. Shashank C. Mangle for the Respondent

CORAM : REVATI MOHITE DERE, J.
THURSDAY, 27th FEBRUARY 2020

P.C. :

1 Heard learned counsel for the parties.

2 By this petition, the petitioners have impugned the order dated 25th April 2017 passed by the learned District Judge-3, Kolhapur in Misc. Civil Appeal No. 63/2017, by which the learned Judge (Appellate Court) was pleased to allow the respondent/plaintiff's appeal and consequently set-aside the order dated 21st January 2017 passed by the trial Court below Exhibit 5 and 27 in Regular Civil Suit No. 246/2014 and as such allowed the said applications i.e. Exhibits 5 and 27 and restrained the petitioners from causing any sort of obstruction and interference into the peaceful possession of the respondent/plaintiff over the suit property till the final disposal of the suit.

3 Learned counsel for the petitioners submits that by a registered Sale Deed dated 21st August 2008, the respondent/plaintiff had sold the suit property to the petitioner No. 2 along with petitioner No. 1 and others. Learned counsel relied on the registration document to show the presence of the respondent/plaintiff at the time of the registration of the Sale Deed. He submits that the respondent/plaintiff having sold the suit property to the petitioner No. 2 by registered Sale Deed, cannot now resile from the same.

4 Learned counsel for the respondent/plaintiff opposes the petition and submits that no interference is warranted in the impugned order. Learned counsel for the respondent/plaintiff pointed out that the Sale Deed dated 21st August 2008 was signed by the other members of the family and that, the said document has not been signed by the respondent/plaintiff. He further submits that even the registration of the Sale Deed which took place at 2:46:33 p.m, does not show that the respondent/plaintiff was present. He further submits that the registration which took place at 3:0:34 p.m shows the photograph of the respondent/plaintiff as the same was done by misrepresenting that the petitioner No. 1 wanted to obtain a loan from a Bank. He further submits that the respondent/plaintiff had no knowledge that his photograph, as taken

on the registered Sale Deed before the Sub-Registrar, was in connection with the suit property. He submits that the respondent/plaintiff was continuing to cultivate the suit land till about 2012. He submits that for the first time, the petitioner No.2 started creating obstacles in the respondent/plaintiff's cultivation and disclosed that the suit land had been sold by him to the petitioner No.2. He submits that pursuant thereto, he visited the Sub-Registrar's office and realized that he had been cheated by the petitioners. He submits that pursuant thereto, the respondent/plaintiff filed a criminal case as against the petitioners. He further submits that the respondent was in possession of the suit property, even prior to the alleged Sale Deed and even thereafter.

5 Perused the papers. It appears that the respondent/plaintiff has filed a suit for partition, separate possession, declaration and for permanent injunction as against the petitioners, in the Court of the learned Civil Judge, Junior Division Peth Vadgaon. In the said suit, the respondent/plaintiff filed two applications i.e. Exhibit 5 and Exhibit 27 and sought temporary injunction. The trial Court, after hearing the parties, was pleased to reject both the said applications for temporary injunctions filed by the respondent/plaintiff vide order dated 21st January 2017.

6 Being aggrieved by the said order, the respondent/plaintiff filed an appeal being Misc. Civil Appeal No. 63/2017 in the District Court, Kolhapur. The Appellate Court, after hearing the parties, was pleased to pass the order dated 25th April 2017. The operative order reads thus :

“ORDER

1. *Appeal is allowed.*
2. *Impugned order passe below exh. 5 and 27 dt. 21-01-2017 in Reg. C.S.No. 246/2014 by Civil Judge, J.D. Peth Vadgaon, is set aside.*
3. *Applications below exh. 5 and 27 filed by plaintiff in original suit are allowed.*
4. *The defendants are temporarily restrained from causing any sort of obstruction and interference into peaceful possession of plaintiff over the suit properties till final disposal of suit.*
5. *Defendant no. 2 is temporarily restrained from alienating the suit properties or creating third party interest in it till final disposal of suit.*
6. *Decree be drawn accordingly.”*

7 Admittedly, the petitioner No. 1 and the respondent are real brothers. It is also not in dispute that the suit property is an ancestral property, of which, no partition by metes and bounds, is effected. It *prima*

facie appears that the petitioner No. 1 sold the suit property to petitioner No. 2 vide Sale Deed dated 21st August 2008. A perusal of the said Sale Deed dated 21st August 2008 shows that the same was signed by petitioner No. 1 and the other members of the family and that, the said document has not been signed by the respondent/plaintiff. It also appears that when the first registration took place before the Sub-Registrar's Office, as the respondent/plaintiff was absent, his photograph and thumb impression are not there on the said document. However, subsequently, at 3:05:34 p.m, the petitioner's photograph was taken by the Sub-Registrar along with his thumb impression. It also *prima facie* appears that by misrepresenting the respondent/plaintiff, he was asked to remain present before the Sub-Registrar and his photograph was taken. If the respondent/plaintiff was present before the Sub-Registrar voluntarily in connection with the sale of the suit property, there is no reason why the respondent No. 2 would not have affixed his signature on the Sale Deed dated 21st August 2008. It also appears that after realizing the misrepresentation and the fraud committed by the petitioners, the respondent/plaintiff filed a criminal case against the petitioners, which is pending.

8 A perusal of the Sale Deed shows that the respondents/plaintiff has not signed the same. *Prima facie*, it also appears that the

respondent/plaintiff was in possession of the suit property prior to the alleged Sale Deed and even thereafter. As noted above, the suit property being ancestral property, has not been partitioned by metes and bounds.

9 Considering the aforesaid, the Appellate Court has rightly passed the impugned order dated 21st January 2017. No interference is warranted in the same. Petition is accordingly dismissed.

10 The trial Court to decide the suit on its own merits in accordance with law, uninfluenced by the observations made in this order.

11 At this stage, learned counsel for the petitioners seeks continuation of the order of status-quo for a period of six weeks. Accordingly, the order of status-quo is continued for a period of six weeks from today.

REVATI MOHITE DERE, J.