

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****APPEAL FROM ORDER NO. 875 OF 2019****WITH****CIVIL APPLICATION NO. 1049 OF 2019****IN****APPEAL FROM ORDER NO. 875 OF 2019**

Shri. Vilas Dhondusheth Bhujbal

.....Appellant.

Vs.

Shri. Dilip Gopinath Bhujbal & Ors.

.....Respondents.

Mr. P. S. Dani, Senior Advocate i/b Mr. S. C. Wakankar for the Appellant.

Mr. Atul Damle, Senior Advocate i/b Mr. A. P. Kulkarni for Respondent Nos.1 and 2.

Ms. Sweta Shah for the Respondent Nos.4 and 5.

CORAM : A. S. GADKARI, J.

DATE : 10th FEBRUARY, 2020.

P.C.:-

By the present Appeal, the Appellant has impugned Order dated 10th June, 2019 passed below Exhibit-5 in Special Civil Suit No. 65 of 2019, rejecting the said Application, by the learned Joint Civil Judge, Senior Division, Khed-Rajgurunagar, District Pune,.

2 Heard Mr. Dani, learned Senior Counsel for the Appellant, Mr. Damle, learned Senior Counsel for the Respondent Nos. 1 and 2 and Ms. Sweta Shah, learned counsel for the Respondent Nos. 4 and 5.

3 The record indicates that, the Appellant has filed the
aforestated Civil Suit No. 65 of 2019 for declaration that, the Respondent
Nos. 1, 2, 4 and 5 be directed by an Order of injunction that, the Appellant
should not be dispossessed from the suit property without following due
process of law and the Respondent Nos. 1, 2 , 4 and 5 further directed not
to create any third party right, title and interest in the suit property.

The Appellant had also filed an Application below Exhibit-5 in
the said Suit. As noted earlier, by the impugned Order, the Trial Court has
rejected the said Application.

4 The record further indicates that, the Appellant claims to be in
possession of the suit property i.e. old survey No. 1051 (New Survey No.
62) lying and situated at Village Warulwadi, Taluka Junnar, District Pune
and more specifically within the jurisdiction of Sub-Registrar, Narayangaon,
admeasuring 5 hectores and 91 Ares. It is case of the Appellant that, the suit
property has come to his share initially by virtue of family arrangement
dated 1st July, 1981. That, by virtue of subsequent document dated 14th
May, 1987 i.e. the Confirmation of said family arrangement, the Appellant
further reiterates his position over the said suit property, which has come to
his share by way of said Deed of family arrangement dated 1st July, 1981.

It is the further case of the Appellant that, by registered Deed
of Conveyance dated 3rd November, 2018, the Respondent Nos. 1 and 2 sold
their undivided share in the suit property in favour of the Respondent Nos.

4 and 5. The legal heirs of Respondent Nos. 1 and 2 are the consenting parties to the said Conveyance Deed.

5 As the Respondent Nos. 1 and 2 sold their undivided share in the suit property to the Respondent Nos. 4 and 5 by way of aforesaid registered Deed of Conveyance dated 3rd November, 2018 and having apprehension about their immediate dispossession from the suit property, the Appellant filed the aforesaid suit. The Trial Court has rejected the said Application filed below Exhibit-5 predominantly on the ground as mentioned therein and *prima facie* recording a finding that the said settlement dated 1st July, 1981 was in fact, not given effect by the family members of the Appellant and the Respondent Nos. 1 and 2. The Trial Court has perused various documents produced by parties to the said Suit while recording the said finding.

6 It is to be noted here that, the Respondent No.3 Sunil Gopinath Bhujbal who is brother of Respondent Nos. 1 and 2 has filed a Suit for partition i.e. Regular Civil Suit No. 199 of 2016, which is pending for final adjudication before the Civil Judge, Junior Division, Junnar, District Pune. In the written statement filed by the Respondent Nos. 1 and 2, they have raised a counter-claim and have also demanded partition of old Survey No. 1051(New Survey No. 62) i.e. Suit property involved in the present Suit.

7 As the suit for partition filed by Respondent No.3 Sunil Gopinath Bhujbal is pending for final adjudication, it will be appropriate

for the Respondents herein, not to aggravate the situation by creating third party right, title and interest in the Suit property.

In view thereof, pending the said Suit i.e. the Regular Civil Suit No. 199 of 2016, the Respondent Nos. 1 and 2 are hereby directed not to give actual effect to the Deed of Conveyance dated 3rd November, 2018 i.e. to part with the physical possession of the suit property in favour of Respondent Nos. 4 and 5 during the pendency of the said suit.

In view thereof, the impugned Order dated 10th June, 2019 is partly modified. Appeal is partly allowed in the aforesaid terms.

In view of disposal of the Appeal from Order itself, Civil Application No. 1049 of 2019 does not survive and is also disposed off.

8 As the issue involved in the present Suit i.e. Special Civil Suit No. 65 of 2019 pending on the file of learned Civil Judge, Senior Division, Khed- Rajgurunagar and Regular Civil Suit No. 199 of 2016 pending on the file of learned Civil Judge, Junior Division, Junnar is pertaining to the share in the suit property, claimed by the Respondent Nos. 1 and 2 herein and the evidence would be of common witness, it is appropriate that, both the suits be decided together to avoid multiplicity of recording of evidence and passing separate decree in the matters.

In view thereof, Regular Civil Suit No. 199 of 2016 pending on the file of Civil Judge, Junior Division, Junnar is transferred to the file of Civil Judge, Senior Division, Khed-Rajgurunagar, seized of Special Civil Suit

No. 65 of 2019.

The learned Civil Judge, Senior Division, Khed- Rajgurunagar seized of Special Civil Suit No. 65 of 2019 is hereby directed to conduct and decide both the Suits together.

9 The learned Civil Judge, Junior Division, Junnar seized of Regular Civil Suit No. 199 of 2016 is hereby directed to forward entire record of the said Suit to the Civil Judge, Senior Division, Khed- Rajgurunagar seized of Special Civil Suit No. 65 of 2019, within a period of four weeks from the date of receipt of the present Order.

All the concerned to act on the basis of an authenticated copy of this Order.

(A.S. GADKARI, J.)

Sanjiv S.
Mashalkar
Digitally signed
by Sanjiv S.
Mashalkar
Date:
2020.02.25
18:52:39
+0530