

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.710 OF 2020

(ASHOK PARASRAM SAWARKAR...VS..PARASRAM BHONAJI SAWARKAR(DEAD) & OTH.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri D.S.Khushalani, Advocate for Petitioner.
Shri Hitesh Biherani, Advocate for Respondent No.3.

CORAM : N.B.SURYAWANSHI, J.
DATED : FEBRUARY 04, 2020.

Heard.

2. This petition challenges the injunction order passed in favour of the respondents by the appellate Court in Regular Civil Appeal No.42 of 2015. The petitioner is original plaintiff, who filed Regular Civil Suit No.99 of 2007 seeking declaration against his father (defendant No.1) that the transaction dated 19/07/2007 by which defendant No.1 executed sale-deed of Gut No.29, in favour of the defendant No.3 as well as sale-deed dated 02/06/2010, executed between defendant Nos. 2 and 3 are sham and bogus and the same may be declared as illegal and void. He claimed to be in possession of the suit house and the suit field. The suit field was sold to defendant No.3 by the defendant No.1 (father of the petitioner). The transaction is questioned by filing the suit. He sought injunction that the defendant should not disturb peaceful possession of the petitioner in the suit property.

3. The suit came to be dismissed by the learned trial Court vide judgment dated 18/12/2014. The petitioner, being aggrieved by dismissal of the suit, preferred Regular

Civil Appeal No. 42 of 2015. In the said appeal, the respondent No.3 filed application(Exh.13) seeking injunction. It came to be allowed by the learned appellate Court thereby injunctioning the petitioner herein or anybody claiming through him from disturbing peaceful possession and cultivation of the suit field of respondent No.3 till final decision of appeal. The said order is impugned in this petition.

4. The learned counsel for the petitioner vehemently argued that the learned appellate Court was not justified in allowing the application only on the basis of the 7/12 extract which is in the name of the respondent No.3. Though it is observed that the measurement is done by the respondent No.3, however, wife of the petitioner was present at the time of measurement and she has stated that the measurement is not acceptable. The finding recorded by the learned trial Court that the petitioner is not in possession of the suit property is questioned by way of substantive appeal by the petitioner. So also mutation entry in 7/12 extract is under challenge. Hence, the learned appellate Court ought not to have granted relief of injunction against the petitioner.

5. The learned counsel representing the third respondent states that he is bonafide purchaser for a valuable consideration having purchased the suit property (agricultural land) from the father (since deceased) of the petitioner by way of registered sale-deed. The sale-deed contains recital that the property was handed over in possession of the third respondent on the date of execution of the sale-deed and he is in peaceful possession of the agricultural land/ suit property. He has got the land measured and in view of the fact that the learned trial Court has recorded a finding that the petitioner

(original plaintiff) is not in possession, however, the father of the petitioner (original defendant No.1) was put in possession by the petitioner/plaintiff by executing affidavit (Exh.37), which is placed on record as Annexure-A to the present petition. The learned counsel for the respondent No.3, therefore, contends that there is no merit in the present petition and it deserves to be dismissed.

6. On perusal of the record, it is clear that the learned trial Court has dismissed the suit of the petitioner with observation that the petitioner is not in possession of the suit land, which is based on the documentary evidence. The argument of the learned counsel for the petitioner (original plaintiff) that the said affidavit is sham and bogus did not find favour with the learned trial Court. Apart from this, the learned appellate Court while considering the application (Exh.13) has observed that the third respondent has conducted measurement of the suit land and that 7/12 extract is in the name of the third respondent and the findings recorded by the learned trial Court that the plaintiff is not in possession of the suit property, weighed with the learned appellate Court while allowing the said application for injunction. No fault can be found in the order passed by the learned appellate Court. There is no merit in the petition. I do not find any illegality or error of jurisdiction which necessitates interference by this Court in extraordinary writ jurisdiction.

Hence, the writ petition is **dismissed**. No order as to costs.

JUDGE