

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

C.A.F. NO.1511/2020 IN FIRST APPEAL NO. 407/2020

(SUDHIR AMARSINGH SANKLECHA & ANOTHER **VERSUS**
AMARSINGH RAJMALJI SANKLECHA (DEAD) THR. LR's MEENA RAJESH
CHORDIYA & OTHERS)

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

Court's or Judge's order

Shri J.T. Gilda, Senior Counsel with A.J. Gilda, counsel for the appellant.
Shri K.J. Hakani with A.P. Chaware, counsel for the R-2 to 7, 11 & 12.

CORAM : A. S. CHANDURKAR AND N. B. SURYAWANSHI, JJ.

DATED : 22th DECEMBER, 2020.

The applicants who are the original plaintiffs are aggrieved by the judgment of the trial Court dated 02.11.2020 in Special Civil Court No.85/2008 by which the suit filed by them for partition, separate possession, permanent injunction, declaration as well as for cancellation of gift-deed dated 21.05.1987 has been dismissed.

By this application, the original plaintiffs pray that the legal heirs of defendant nos. 6 and the defendant nos.7 be restrained from creating third party rights in the suit property and also from alienating the same during pendency of the appeal.

Shri J.T. Gilda, learned Senior Advocate for the appellants after referring to the plaint averments as well as the judgment of the trial Court submitted that the appreciation of the evidence of the trial Court was perverse resulting in the finding being recorded that the suit properties were not ancestral properties in the hands of Rajmal. According to him it could not have been held that the defendant no.5-Kasturibai had perfected her title by way of adverse possession in respect of the fields at Wagda. The finding that the present suit was hit by the principles of *res-judicata* with regard to the property at Shahpur in view of the fact that the decree

in Special Suit No.69/1987 was operating was also incorrect. The property at Shahpur was not the subject matter of properties involved in that suit. Moreover, the document dated 01.06.1984 at Exhibit 136 indicating arrangement between the parties was also not registered. In absence of such registration the finding recorded by the trial Court was contrary to law especially in the light of the decision of the Hon'ble Supreme Court in *Mohammad Yusuf and Others Versus Rajkumar and Others* [2020 SCC Online SC 125]. According to him, the appeal gave rise to various issues and on a proper consideration of the evidence of record, the suit was liable to be decreed. Merely because the trial Court had dismissed the suit the same would not disentitle the applicants from seeking such injunction. For said purpose, he placed reliance on the decision in *Maneklal Jainarayanji Sabu Versus Ruprao Ganpatrao Bhonde* [2000(4) Mh.L.J. 450].

On the other hand, Shri K.J. Hakani, learned counsel for the contesting respondents opposed the prayers made in the application and relied upon the reply placed on record. He submitted that in absence of any material evidence to indicate that the suit property was ancestral property the issue in that regard was rightly answered. Referring to paragraph 3 of the plaint in Special Civil Suit No.69/1987, he submitted that Shahpur property was very much a suit property. There was no reason therefore to register the decree as urged. The defendant no.7 having purchased the part of the suit property from the defendant no.6 on 09.09.2011 the finding that he was a *bona fide* purchaser had been rightly recorded. It was submitted that for a considerable period there was no order of temporary injunction operating and therefore the application in question was liable to be rejected.

We have heard the learned counsel for the parties and we have also perused the impugned judgment as well as other material that was referred to by the learned counsel. *Prima-facie*, it is seen that on

appreciation of the evidence on record, the trial Court has come to the conclusion that the plaintiffs had failed to prove that the suit properties were ancestral properties. On the question of requirement of registration of the decree passed in Special Civil Suit No.69/1987, it has been observed that there was reference of Shahpur property in the plaint in Special Civil Suit No.69/1987. The suit properties being the subject matter of the earlier suit had been partitioned pursuant to the document dated 01.06.1984 after which a decree came to be passed. It has also been held that the gift-deed dated 31.05.1987 was executed with the consent of defendant no.1-Amarsingh. The applicants are the sons of Amarsingh. Though the finding recorded that the defendant no.5 had perfected her title by way of adverse possession is arguable it is seen that the defendant no.6-Trust after obtaining permission of the Charity Commissioner had sold part of the suit properties to the defendant no.7 on 09.09.2011. It is on the basis of these findings that the trial Court proceeded to dismiss the suit.

Prima-facie, at this stage, we do not find the aforesaid findings to be so perverse to enable us to come to the conclusion that the applicants are entitled to an order of interim injunction so as to restrain the defendant no.6 and defendant no.7 from alienating the suit property. It is also to be noted that they for some period of time when the suit was pending an order of *status quo* was operating the same ceased to operate with the dismissal of the special leave petition by the Hon'ble Supreme Court on 08.04.2013. The judgment of the trial court is dated 02.11.2018 and hence for a considerable period there is no interim injunction operating. In that view of the matter, we do not find any case made out to grant interim injunction so as to restrain creation of third party rights in the suit property during pendency of the appeal. However since the appeal is pending in this Court, any alienation made in respect of the suit property would abide by the final adjudication of the appeal.

The civil application is disposed of in aforesaid terms.

(N. B. SURYAWANSHI, J.)

(A. S. CHANDURKAR, J.)

APTE

Rohit
Apte

Digitally signed by
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