

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

WRIT PETITION NO. 4792/2017

Vithoba N. Mante & anr.
..VS..
Sheshrao N. Mante & anr.

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

Court's or Judge's orders

Shri S.V. Deshmukh, Advocate for the petitioner(s)
Shri S.S. Dhengale, Advocate for the respondent nos. 1 and 2

CORAM : N.B. SURYAWANSHI, J.
ORDER RESERVED ON : 17/02/2020
ORDER PRONOUNCED ON : 12/03/2020

1] The petition challenges the order passed below application (Exh. 5) by the learned Appellate Court thereby allowing the said application and granting injunction in favour of the respondents.

2] The respondents – original plaintiffs filed suit for permanent injunction against the petitioners – original defendants bearing R.C.S. No. 50/2014, in the Court of learned Civil Judge, Junior Division, Deulgaon-Raja. The case of the plaintiffs, in short, is that the suit property is ancestral property of the plaintiff no. 1 which was purchased by the father of the petitioner no. 1 and respondent no. 1 vide sale-deeds dated 05/05/1979 and 28/04/1980 from Salubai Sampat and Gangubai Parhad. In the suit, application (Exh. 5) for grant of temporary injunction was filed. The defendants resisted the said application by filing their reply. The learned trial Court rejected the application for temporary injunction. The plaintiffs, therefore, approached the Appellate Court by

filing appeal i.e. M.C.A. No. 60/2015 under Order 43 Rule 1 of the Code of Civil Procedure, challenging the order passed by the learned trial Court below application (Exh. 5). The learned Appellate Court allowed the MCA and granted temporary injunction in favour of the original plaintiffs. Hence, the present writ petition.

3] Heard learned advocates for the respective parties. Perused the writ petition, annexures thereto and the reply filed by the respondents.

4] Learned advocate for the petitioners submits that the learned Appellate Court was not justified in taking into consideration the unregistered partition deed which is unstamped and the same could not have been considered even for collateral purpose in terms of Section 35 of the Indian Stamp Act, 1899. The property cannot be identified and therefore the plaintiffs were not entitled for temporary injunction in their favour. No case of balance of convenience in favour of the plaintiffs was made out. So also the plaintiffs could not show that if injunction is not granted, irreparable loss would be caused to the plaintiffs. He contends that the mutation entry which was relied upon while granting the temporary injunction was obtained by the plaintiffs by fraud and therefore though it is a fact that the mutation entry is confirmed by the Commissioner, since it was obtained by fraud, it ought not have been looked into. It is further contended that the partition deed was not placed before the learned trial Court and only in appeal the same was placed on record before the Appellate Court and hence, the said partition deed could not have been relied upon. The plaintiffs have not discharged their burden to show that prima-facie

they were in possession of the said land. He also contended that the notice of mutation by which the name of the respondent no. 1 – plaintiff no. 1 was entered in the extract was issued on 03/03/2009 and on the same day, the mutation was effected. Hence, there is fraud played by the respondents – plaintiffs in that process. Therefore, the impugned order since is passed without considering this aspect is unsustainable and the same is liable to be quashed and set aside.

5] On the other hand, learned advocate for the respondents would urge that, it is clear from the record that prima-facie the plaintiffs are in possession of the said land. It is further submitted that though no specific survey numbers are mentioned in the partition deed, the lands are identified by their names and it would be a matter of evidence. In the 7/12 extract, the names of the plaintiffs are specifically mentioned. The mutation entry was challenged before the Additional Commissioner who has decided in favour of the plaintiffs and his order in respect of the revenue record has attained finality as the same was not challenged by the defendants. He, therefore, supports the impugned order and states that the writ petition does not carry any substance and it may be dismissed.

6] The learned trial Court, while rejecting the application (Exh. 5), has observed that the partition deed is not placed on record. Therefore, the learned trial Court, came to the conclusion that the mutation, prima facie, appears to be doubtful and merely because the names of the plaintiffs are appearing in the 7/12 extract prima-facie, it cannot be said that the plaintiffs are the owners of the said land. It is

also observed that the proceedings is pending with the revenue authorities. Therefore, the learned trial Court held that no prima-facie case is made out by the plaintiffs, so also the balance of convenience is not in favour of the plaintiffs.

7] Before the Appellate Court, the copy of the memo of partition / partition deed was placed on record along with the other documents. The learned Appellate Court held that the documentary evidence show that the plaintiffs are in possession of the suit land. Considering the order of Revenue Commissioner wherein it was held that the plaintiff no. 1 – Sheshrao Namdeo Mante is in possession of the suit land and the fact that the defendants have not filed any document on record to show that the order of Commissioner is set aside by any higher authority, the learned Appellate Court came to the conclusion that the finding recorded by the learned trial Court that the plaintiffs are not in possession of the suit land and on that basis rejecting the application for temporary injunction was not legal, proper and correct.

8] The plaintiffs relied upon the documents like 7/12 extract, mutation entry, decision of the Commissioner and the partition deed to contend that they are in possession of the respective suit land and injunction needs to be granted against the defendants. The learned Appellate Court was justified in coming to the conclusion that the documents show that the plaintiffs are in possession of the suit land. There is no dispute that the suit property was purchased by Namdeo Mante and it was the ancestral property of the plaintiffs and his brothers. The purpose of temporary injunction is to maintain status-quo as on the date of the suit. As the documentary evidence was in favour of the plaintiffs, they are

in possession of the suit land so also, the learned Revenue Commissioner after hearing the concerned parties, came to the conclusion that the plaintiff no. 1 – Sheshrao is in possession of the suit land. The said order of learned Commissioner appears to have become final. The learned Appellate Court, by observing that the plaintiffs are in lawful possession of the suit land and the defendants are obstructing the possession of the plaintiffs over the suit land, came to the conclusion that prima-facie balance of convenience lies in favour of the plaintiffs and if temporary injunction is not granted, then the plaintiffs will suffer irreparable loss.

9] I do not find any fault in the impugned order. The learned Appellate Court has rightly exercised its discretion. Since the learned Appellate Court has recorded finding of fact, I do not wish to entertain this writ petition challenging the same, in extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India. Hence, the following order:-

ORDER

- (a) The writ petition is **dismissed**.
- (b) There shall be no order as to costs.

JUDGE