

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

WRIT PETITION NO.8483/2018

Rameshwar Sakharam Manekar

...Versus...

Smt. Savita Pradeeprao Kanerkar and another

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

Court's or Judge's orders

Shri P.S. Patil, Counsel for petitioner
Shri G.R. Sadar, Counsel for respondent no.2

CORAM : AVINASH G. GHAROTE, J.

DATE : 03/03/2020

1. Heard Shri Patil, learned Counsel for the petitioner and Shri Sadar, learned counsel for the respondent no.2.

2. The present petition takes exception to the order below Exh.5, dated 26/7/2018 passed by the Trial Court in Regular Civil Suit No.43/2018, rejecting the application for grant of injunction, as filed by the present petitioner, who is the plaintiff before the Trial Court.

3. It is an admitted position that the suit property was purchased on 24/4/1995 by a deed of sale, which stands in the name of original defendant no.1 - Savita Kanerkar. It is further admitted position that the plaintiff/petitioner is the

father of the defendant no.1. The petitioner herein filed a suit for declaration and injunction contending that the sale-deed 24/4/1995 was a nominal sale-deed and the plaintiff, in fact, was the real owner of the suit property, in possession of the same. The learned Trial Court, in the order below Exh.5 dated 26/7/2018 found that the sale-deed of the suit property was in the name of the defendant no.1, which was dated 24/4/1995, since which date no proceedings were initiated by the plaintiff, to challenge the same in spite of being aware of the sale-deed. The Trial Court, therefore, found that since the transfer has been executed by the defendant no.1 - Savita Kanerkar in favour of the defendant no.2 – Jaiwant Gawai, *prima facie*, there was transfer of title in favour of defendant no.2, by virtue of sale-deed dated 21/5/2018 in his favour. The Trial Court further found that the claim of the plaintiff being in possession, was not substantiated and thus rendered a finding that it was the defendant no.1, who *prima facie* appeared to be in possession.

4. This order below Exh.5 was challenged in appeal bearing Misc. Civil Appeal No.36/2018, in which the District Judge-I, Achalpur by its judgment dated 1/10/2018 held the defendant no.1 to be the owner of the suit field and in view of the transfer effected by her in favour of the defendant no.2, on 21/5/2018 the defendant no.2 to be the owner of the suit property. It therefore held that the injunction against

the true owner was not permissible in law and therefore, dismissed the appeal.

5. Shri Patil, the learned Counsel for the petitioner assailing both the orders of the Trial Court and the judgment in appeal contends that the plaintiff/petitioner was throughout in possession of the suit field. He, however, cannot dispute the relationship between the plaintiff and the defendant no.1, in light of which, and in absence of any document, even if it is presumed that the plaintiff was at any time in possession, the same naturally would be for and on behalf of the defendant no.1, unless and until the Trial Court renders a finding upon a decision on merits that the plaintiff was the real owner of the property. At present, however, that is not the case, as found by both the Courts below, in light of the sale deed dated 24/4/1995 in favour of defendant no.1. The plea of possession, as raised by the plaintiff, has also been negated. In fact, in para 7 of the petition, a statement has been made that it was the respondent no.2, who was in possession of the suit field, though such possession is sought to be related to an authority letter executed by the defendant no.1 in favour of defendant no.2 and a tenancy agreement claimed to have been executed by the defendant no.1, in favour of the defendant no.2. Whatever be the position, the fact remains, as admitted by the plaintiff himself, that as on date it is the defendant no.2, who is in possession of the suit property. Such statement was also recorded by this Court in

its order dated 19/3/2019. Thus, the position which avails on record is that the title as of date vests in the defendant no.2, in light of the sale-deed dated 21/5/2018 and the defendant no.2 is also in possession of the suit property, in light of which, I do not find any merits in the arguments, as advanced by the learned Counsel for the petitioner. The plea of the plaintiff/petitioner, being the real owner of the suit property, is a plea, which requires evidence and in case the plaintiff is able to establish the same on merits, he would be entitled to the fruits of the decree, which may be passed in his favour, however, as of date, the *prima facie* findings as recorded by both the Courts below do not suffer from any infirmity, in light of which, the writ petition fails and is accordingly dismissed. No order as to costs.

JUDGE

Wadkar, P.S.