

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPEAL FROM ORDER NO.24 OF 2020
WITH
CIVIL APPLICATION NO.6921 OF 2020

Sultana Sayyad Munir

... Appellant

Versus

1. Jayantilal s/o Pannalal Bagrecha
2. Hemchand s/o Tarachand Bhandari

... Respondents

.....

Mr. Mazhar A. Jahagirdar, Advocate for appellant.
Mr. A. D. Ostwal, Advocate for respondents.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 27th January, 2021

ORDER :-

1. Present appeal from order has been filed under Section 104 read with Order 43 of the Code of Civil Procedure to challenge the order passed by the learned District Judge-10, Ahmednagar on Application Exhibit-05 in Regular Civil Appeal No.118 of 2020; whereby the application for interim injunction restraining the respondents from selling, transferring or alienating the suit property during the pendency of the appeal before the learned District Judge, came to be rejected.

2. Present appellant is the original plaintiff and respondents are the original defendants (hereinafter the parties are referred to by

their nomenclature before the Trial Judge). Plaintiff filed suit i.e. Regular Civil Suit No.478 of 2018 for preemption and for permanent injunction before the learned Civil Judge Senior Division, Ahmednagar. The said suit came to be dismissed on 09-03-2020 by learned 8th Joint Civil Judge Senior Division, Ahmednagar. The said judgment and decree is under challenge in Regular Civil Appeal No.118 of 2020. At the interim stage, the said application Exhibit-05 has been filed by the appellant – plaintiff for temporary injunction.

3. Heard learned Advocate Mr. Mazhar A. Jahagirdar for appellant and learned Advocate Mr. A. D. Ostwal for respondents

4. It has been vehemently submitted on behalf of the appellant that the appellant – plaintiff has a right of preemption to purchase the land presently owned by the defendants. Defendants are the owners of agricultural land Gut No.50/1 admeasuring 6 Hectare 91 R situated at Mauje Sakat Khurd, Tq. Nagar, District Ahmednagar. It is the contention of the plaintiff that original Gut No.50 was admeasuring 10 Hectare 91 R which has been thereafter subdivided as 50/1 and 50/2. Plaintiff and her husband's brothers and plaintiff's nephew had purchased the said land original Gut No.50 about 25 to 30 years ago i.e. on 22-04-1991. The brother in law and nephew of the plaintiff had sold 1 Hectare 60 R land from Gut No.50 to Sindhu Nitin Jadhav and others by sale deed

dated 30-01-2010. Sindhu Nitin Jadhav, thereafter, sold the land to defendant Nos.1 and 2 on 10-05-2011. The plaintiff has come to know that now defendant Nos.1 and 2 want to sell the land and, therefore, she met defendant Nos.1 and 2 on 15-08-2018 and expressed her willingness to purchase the land, however, the defendants refused and, therefore, she filed the suit. It was represented by the defendants in their written statement that they don't want to sell the land and, therefore, the suit was dismissed. Further, even at the time when the matter was before the learned District Judge, same contention was taken and, therefore, the said application came to be rejected on 04-08-2020. However, thereafter, on 02-09-2020, the defendants have sold part of the land to one Rajendra Namdev Gund and another part was sold to Pravin Shankar Pawar and Akshay Shankar Pawar. Photocopies of the sale deeds have been produced. This shows that though the present appellant – plaintiff is having right to purchase the suit property, yet, intentionally, she has been kept away. Therefore, it is necessary to restrain the respondents from selling the land any further.

5. Per contra, the learned Advocate representing the respondents strongly opposed the appeal from order and supported the reasons given by the learned District Judge-10, while rejecting the application. It was submitted that the plaintiff is claiming preferential right under the Maharashtra Prevention of Fragmentation and

Consolidation of Holdings Act, 1947 (hereinafter referred to as the 'Fragmentation Act'), however, she had failed to prove that she has any such kind of right before the learned Lower Court. The relief of injunction is equitable and unless the right is shown, the discretion cannot be exercised, therefore, the application Exhibit-05 was rightly rejected.

6. At the outset, it can be seen from the documents those have been produced on record that the plaintiff and defendants are from different families and also from different religions. It was reiterated by the learned Advocate appearing for the plaintiff that the plaintiff is claiming preferential right to purchase the land under the Fragmentation Act. It appears from the judgment of the learned Trial Judge that there was no evidence that the defendants were selling the land or had intention to sell, therefore, the suit was held to be prematured. No doubt, the legal aspect involved as to whether the plaintiff is having right to purchase the suit land by preemption is not discussed by the learned Lower Court, yet, *prima facie* it appears that there was no compliance of Section 7(2) of the Fragmentation Act. Further, the plaintiff has not shown as to what is the standard of holding in village Sakat Khurd and after the alleged subdivision of original Gut No.50, Gut No.50/1 has become fragment as defined under the Fragmentation Act. Unless both the portions of the land become

fragment, any such right under the Fragmentation Act, cannot be used by the holder of the land. In other words, in order to exercise the right under Section 7(1) of the Fragmentation Act, both the lands i.e. of the plaintiff and the defendants should be a fragment. When it is not shown *prima facie* that the provisions of the Fragmentation Act are applicable and it gives a right to the plaintiff, there is no question of granting any injunction in favour of the plaintiff. Further, already the said has taken place and, therefore, it will not be out of place to mention here that the application has been rendered infructuous. Therefore, there is no merit in the present appeal from order. It deserves to be dismissed. Accordingly, it is dismissed.

7. In view of dismissal of present appeal from order, Civil Application No.6921 of 2020 does not survive. Accordingly, the same stands disposed of. Interim relief granted earlier vide order dated 26-10-2020, which was in operation till today, shall stand vacated.

[SMT. VIBHA KANKANWADI, J.]

scm