

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6497 OF 2020

Vishnudas Mohanlal Kudal

... Petitioner

Versus

Vasant Rupchand Rathod and others

... Respondents

....

Mr. Abhijit S. More, Advocate for petitioner

Mr. Sanjay A. Wakure, Advocate for respondent No.1

Mr. Amol G. Wasmatar, Advocate for respondent Nos. 4 and 5

Respondent Nos. 2, 3 6 to 10 - formal parties.

....

CORAM : R. G. AVACHAT, J.

RESERVED ON : 21st JANUARY, 2021

PRONOUNCED ON : 27th JANUARY, 2021

PER COURT :-

. The challenge in this writ petition is to the judgment and order dated 07.09.2020 passed by the District Judge-3, Osmanabad in Misc.Civil Appeal No.13 of 2020. By the impugned order, interim injunction granted by the trial Court in favour of the petitioner-plaintiff, came to be vacated. The petitioner-plaintiff, is therefore before this Court.

2. Mr. Abhijit S. More, learned Advocate for the petitioner-plaintiff, would submit that the appellate Court ought not to have interfered with discretionary order passed by the trial Court. The appellate Court was not expected to observe whether the petitioner-plaintiff was in possession of the suit land as a owner thereof. According to him, at the stage of deciding application for interim injunction, three aspects, namely *prima-facie* case, balance of convenience and irreparable loss, are only to be seen. The petitioner-plaintiff has purchased the suit land for a valuable consideration from its original owner in March 2017. Since the date of purchase, he has been in possession of the suit land. The effect of the sale deed has been reflected in 7/12 extract. The Tahsildar has permitted the petitioner-plaintiff to change the user of the suit land from agriculture to non agriculture. A petrol pump has been set up on some portion of the suit land. According to the learned Advocate, there is nothing to indicate the Indian Railways to have acquired any portion forming part of the suit land. It is in the other rights column in the 7/12 extract, an entry is appearing. The land of the co-owners that might have been acquired. According to the learned Advocate, it is only the factum of possession that has to be seen for grant of interim injunction, since the petitioner-plaintiff has been in

possession of the suit land on the date of the suit. The trial Court rightly granted application Exh.5. The appellate Court should not have interfered with the order passed by the trial Court. He, therefore, urged for setting aside the impugned order.

3. Learned Advocate for the respondents would on the other hand submit that no one can give better title than he himself has. The petitioner-plaintiff purchased the land from one Surshen Ghogare, who had purchased 3 Hectare 84 Ares land along with one Wamanrao Nalawade vide sale-deed dated 04.07.1992. As such, both Ghogare and Nalawade had equal share in the land admeasuring 3 Hectare 84 Ares in *Gat* No.340. Subsequently, the Indian Railways acquired 1 Hectare 55 Ares land belonging to Surshen Ghogare, predecessor in title of petitioner-plaintiff. He has also received compensation under the award passed regarding acquisition of the land. As such, not more than 29 Gunthas of land remained with Surshen Ghogare. He, however, sold the land admeasuring 1 Hectare 84 Ares to the petitioner-plaintiff under the registered sale-deed dated 24.03.2017. Since Surshen Ghogare did not have right, title and interest more than 29 Gunthas in land *Gat* No.340, no title along with possession could be said to have been

transferred to the petitioner-plaintiff. The appellate Court has rightly upset the trial Court's order. The learned Advocate, therefore, urged for dismissal of the petition.

4. The petitioner-plaintiff filed the suit for injunction simplicitor. The subject matter of the suit is the land *Gat* No.340, admeasuring 1 Hectare 84 Ares. He claims title and possession on the suit land by virtue of sale-deed dated 24.03.2017. The copies of the sale-deed, 7/12 extract and N.A. permission granted by the Tahsildar, are on record. In the first blush, it may appear the petitioner-plaintiff to have title and possession over the suit land. Under the sale-deed dated 24.03.2017, Surshen Ghogare sold the petitioner-plaintiff suit land. There is recital in the sale-deed indicating handing over possession of the suit land. The effect of the sale-deed has been reflected in the 7/12 extract.

5. True, The Tahsildar has also granted permission to convert the user of the suit land into non agriculture. One Riya Dayama has set up a petrol pump on some of the portion of the suit land. She is in possession thereof by virtue of a lease executed by the petitioner-plaintiff in her favour, in December 2018.

6. The facts are, however, different. Shri Surshen Ghogare, previous owner of the suit land, had purchased land admeasuring 3 Hectare 84 Ares in *Gat* No.340 under the sale-deed dated 04.07.1992. One Wamanrao Nalawade was also co-purchaser along with him under the very sale-deed. As such, Surshen Ghogare had only one half share in the land admeasuring 1 Hectare 84 Ares. The respondents-defendants have produced on record copies of consent letters executed on stamp paper, between Surshen Ghogare and co-owners of land *Gat* No.340. The recitals of those consent letters indicate that the executors thereof had consented to allow Surshen Ghogare to receive amount of compensation of land admeasuring 1 Hectare 55 Ares acquired for Indian Railways. The respondents-defendants have come with a specific case that after acquisition of the said land, only 29 Gunthas land remained with Surshen Ghogare. He, therefore, could not transfer land more than that in favour of the petitioner-plaintiff. A copy of mutation entry indicating acquisition of land has been placed on record. It is evident therefrom that the land admeasuring 1 Hectare 55 Ares from *Gat* No.340 has been acquired for Indian Railways. It has also been shown therein that the acquired land belonged to Surshen Ghogare. As such, the

record indicates that not more than 29 Gunthas of land remained with Surshen Ghogare. He had, therefore, no right, title and interest and even possession over the land more than 29 Gunthas for being transferred to the petitioner-plaintiff under the sale-deed dated 24.03.2017. In the face of factum of acquisition of land, the 7/12 extract, N.A. permission would be of no assistance to the petitioner-plaintiff to make out his claim of possession. So far as regards setting up of petrol pump is concerned, it is to be stated that the same is only in the land admeasuring 25 Gunthas. Surshen Ghogare had 29 Gunthas of land remained with him. The factum of the petrol pump having been there on the suit land would therefore be not sufficient to make out the petitioner to have been in possession of the entire suit land i.e. 1 Hectare 84 Ares.

7. There can be no dispute over the proposition that it is only the factum of possession that is to be seen for grant of interim injunction. It is also true that if trial Court on due exercise of a discretion grants relief of interim injunction, the appellate Court should not substitute its own discretion in place of one exercised by the trial Court.

8. In my view, the appellate Court in the aforesaid facts and circumstances of the case, was well within its jurisdiction to upset the impugned order. No interference is therefore warranted with the impugned order. The writ petition, thus, fails. The same is dismissed.

[R. G. AVACHAT, J.]

LATER ON :-

9. At this stage learned Advocate for the petitioner submits that the petitioner's possession over 29 Gunthas of the suit land, be protected.

10. Learned Advocates for the respondents submit to the orders of the Court.

Since the petitioner is held to be in possession over 29 Gunthas of the suit land on which a petrol pump is being run, pending the suit, the parties are directed to maintain *status-quo* in respect of the said land.

[R. G. AVACHAT, J.]