

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8976 OF 2021

Leelabai w/o Prakash @ Prashant Jagtap,
Age : 58 years, Occu. Household,
R/o at present Flat No.1501,
Building No.10, P.W.D. Ground,
Govt. Colony, Chhada Nagar,
Mankhurd Link Road,
Ghatkopar East, Mumbai – 400 077

PETITIONER
(Orig. Defendant)

VERSUS

Anna Jayaji Pagare,
Age : 74 years, Occu. Agri.,
R/o Shivoor, Tq. Vaijapur,
District Aurangabad

RESPONDENT
(Orig. Plaintiff)

Mr. Laxman K. Pradhan, Advocate for the petitioner
Mr. Punit S. Mehta, Advocate for the respondent

CORAM : MANGESH S. PATIL, J.

DATE : 01.09.2021

ORAL JUDGMENT :

Heard.

2. Rule. The Rule is made returnable forthwith. With the consent of the learned Advocates for the parties, the matter is heard finally at the stage of admission.

3. The petitioner, who happens to be the original defendant in a suit filed by the respondent for specific performance of an agreement stated to be dated 26.05.1977, is impugning the order passed by the learned District Judge in the latter's Misc. Civil Appeal No.03/2020, thereby allowing the appeal and setting aside the order passed on his application for temporary injunction (Exh-5) rejecting it and instead, allowing the application and issuing temporary injunction restraining her from disturbing his possession over the suit property and from creating third party interest.

4. The learned Advocate for the petitioner would submit that though the respondent has been seeking specific performance of the agreement, the petitioner has specifically denied about her mother having ever agreed to sell the property to him. The document dated 26.05.1977 being relied upon by the respondent is, in fact, an affidavit sworn before the Tahsildar. He would further submit that the petitioner is the only daughter of the deceased. She alongwith the deceased have been staying in Mumbai and it is not clear as to how these documents have been brought into existence. The respondent is not even aware about the exact date of death of her mother. He says that she died on 12.08.1989 when, in fact, she died on 22.11.1983. After demise of mother, the petitioner's name was mutated in the revenue record and the respondent had never objected to it. She has been in continuous possession of the suit property. The learned Civil Judge had borne in mind all these facts and circumstances and had rightly used his

discretion in refusing to grant temporary injunction. The order was not perverse or arbitrary and ought not to have been interfered with in the appeal. The learned Advocate would also place reliance on the judgment of the Supreme Court, dated 06.01.2020 in the case of *Ambalal Sarabhai Enterprise Limited Vs. KS Infraspace LLP Limited and another; Civil Appeal No.9346 of 2019 (Arising out of SLP (Civil) No.23194 of 2019)* and connected matters.

5. The learned Advocate for the respondent would submit that though the document dated 26.05.1977 is in the form of an affidavit, the subsequent Bharna Pawati dated 25.06.1982 clearly recites the previous document and further is in tune with the agreement expressing interest to sell the suit property. He would further point out that there is a specific recital in this Bharna Pawati about confirmation of delivery of possession. He would then submit that pursuant to such agreement, Mutation Entry No.1769 has also been certified in the name of the respondent way back in the year 1984. His name now appears in the other rights column in the revenue record of the suit property. Neither the petitioner nor her mother had ever disputed it. The learned Advocate would then submit that as can be seen from the recitals of Bharna Pawati as also earlier affidavit, it was for the deceased mother of the petitioner to obtain necessary permission for effecting sale. The respondent was rightly waiting for the permission to be obtained and having found that the petitioner is refusing to execute the sale-deed, has

filed the suit for specific performance. Though the revenue entries do not create title or right, long standing revenue entries have presumptive value. The learned Civil Judge had overlooked all these clinching circumstances and had exercised discretion improperly. All these facts and circumstances have been clearly borne in mind by the Appellate Court and has rightly interfered with and reversed the order.

6. I have carefully gone through the papers and considered the rival submissions.

7. True it is that though the respondent has propounded an agreement of the year 1977, but has filed suit for specific performance in the year 2018. In my considered view, when the affidavit dated 26.05.1977 and the subsequent Bharna Pawati dated 26.05.1982 specifically speak about the permission to be obtained for executing the sale-deed, the delay, at this juncture, cannot be looked into and will have to be left to be duly considered at the trial.

8. So far as the aspect of possession is concerned, though the affidavit dated 26.05.1977 does not refer to it, the Bharna Pawati specifically recites regarding confirmation of the pre-existing possession. Again, on the basis of such an agreement, Mutation Entry No.1769 has been certified in the name of the respondent and his name appears in the other rights column since the year 1984. Though the revenue record is meant for

fiscal purposes and cannot confer title, it does have a presumptive value. There is no record to show that the petitioner has ever challenged the mutation entry till filing of the suit. According to the learned Advocate for the petitioner that challenge is put now. The fact remains that on the basis of the selfsame agreement, the mutation entry was effected in the name of the respondent, which has continued for years together.

9. All these facts and circumstances clearly indicate that the respondent does have a prima facie case and balance of convenience in his favour and would have been put to irreparable loss if the temporary injunction was not granted. All these material facts and circumstances were clearly overlooked by the learned Civil Judge.

10. Bearing in mind the limited scope for interference, the learned Judge of the appellate Court has rightly considered the aforementioned facts and circumstances in demonstrating as to how the order passed by the Civil Judge was perverse, arbitrary and capricious and empowered him to cause interference while exercising limited jurisdiction.

11. Reliance placed by the learned Advocate for the petitioner on the observations in the decision in the case of ***Ambalal Sarabhai Enterprise Limited*** (supra), were clearly made in the peculiar facts and circumstances obtaining before the Supreme Court and would not be of any help to the petitioner.

12. There is no merit in the Writ Petition. It is dismissed. The Rule is discharged.

[MANGESH S. PATIL]
JUDGE

npj/WP8976-2021