

**HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.961 OF 2017

Shri Shripati Dadu Patil & Anr. Petitioners

Vs.

Shri. Rajendra Dinkar Patil & Ors. Respondents

Mr. Prashant Bhavake for Petitioners.

Mr. Mahindra Deshmukh i/by Suvarna Yadav for Respondent No.1

Coram : NITIN W. SAMBRE, J.

Date : 24TH FEBRUARY, 2021

P.C.:

1 The Petitioner initiated Regular Civil Suit No. 1104 of 2015 under Sections 34 and 38 of the Specific Relief Act thereby praying declaration of joint ownership and an injunction not to disturb his possession.

2 An application seeking temporary injunction moved by the Petitioner-Plaintiff thereby restraining the Defendants from disturbing their possession came to be allowed vide the order passed below

Exhibit 5 on 18th June, 2016. Respondent Nos.2 and 3 feeling aggrieved, who are subsequent purchasers of the property from Defendant No.1 preferred Miscellaneous Civil Appeal No. 149 of 2016, which came to be allowed vide order impugned dated 20th September, 2016.

3 The submissions of learned counsel for the Petitioners are, the Plaintiffs under the guise of settlement of the matter have made the Defendants to understand that they need not to remain present before the Court and as such the Petitioners have not appeared.

4 Taking disadvantage of the said position, the Respondents argued the matter behind back of the Petitioners and as such there was no proper assistance to the Court to pass the order in the matter.

5 Apart from above, the submissions are that the Appellate Court has not considered all facts of the matter viz. the earlier oral partition between the parties, the joint holdings of the property by Plaintiff and Defendant No.4, the documents from revenue entries. He

would claim that the revenue entries are only for the purpose of payment of taxes and cannot be a conclusive proof for acquiring the possession.

6 The counsel for the Respondents opposed the aforesaid claim and denied story put-forth by the Petitioner of the alleged settlement, thereby giving an impression, the Petitioners not to appear in the appeal. Learned counsel then would urge that, though the lower appellate Court has not considered all the documents, which are relied upon by the rival parties, the order passed by the lower appellate Court does not call for any interference. According to him, the title vested in Defendant Nos.2 and 3 by virtue of registered sale-deed to whom defendant no. 1 has sold the suit property. That being so, the order impugned is sustainable and the Petition is liable to be dismissed.

7 Having considered rival submissions, it is noted that the learned trial court considered all the facets of the matter particularly pleaded by the parties in the plaint, written statement and also the documentary evidence, that has been brought on record. The issue of

oral partition, mutation thereafter and the alleged transfer by Defendant No.1 in favour of Defendant Nos.2 and 3 has been appreciated. The trial Court thereafter proceeded to pass order of injunction.

8 The appellate Court while reversing finding of the trial Court has considered that the issue of adoption in absence of documents ought not to have been appreciated by the trial Court. The appellate Court then considered the mutation entry No. 8152 effected on 14th July, 2005, the non preferring of any objection, non challenge of the said mutation entry and the transfer effected based on the same on 30th June, 2006 in favour of the Defendant. As far as the other documents produced by the Plaintiffs, so as to substantiate his possession, viz. M.S.E.B. documents, receipts of the Forest Department, Irrigation Department, the receipts issued by the Co-operative Sugar Factory are not appreciated.

9 In the aforesaid background, it is apparent that the Appellate Court has failed to consider all the facets of the matter including the pleadings, documentary evidence as has been considered

by the trial Court while granting injunction. In that view of the matter, case for showing indulgence is made out.

10 The order impugned dated 20th September 2016 passed by the learned Ad-hot District Judge-3, Kolhapur in Miscellaneous Appeal No. 149 of 2016 is hereby quashed and set aside.

11. The said Appeal stood restored to the file of District Judge before whom the parties agree to appear on 8th March, 2021.

12. Parties who are before the Court agree that they shall work out the matter by submitting their written notes expeditiously and in any case within four weeks from their appearance. As far as other parties are concerned, the Appellate Court, may deal with the issue of effecting service on them independently.

13 Let the appeal be decided within three months from 8th March, 2021.

14 Parties herein agree that they shall maintain status-quo till
the decision of the appeal.

(NITIN W. SAMBRE, J.)