

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3361 OF 2019**

Smt. Mahananda Suresh Imade & Anr. Petitioners

Vs.

Smt. Hemlata Vishnu Devkar Respondent

Mr. Raghvendra B. Kulkarni for Petitioners

Mr. R.S. Alange i/by Mr. Ajit V. Alange for Respondent No. 1.

Coram : NITIN W. SAMBRE, J.

Date : 8TH FEBRUARY, 2021

P.C.:

1. This petition is by the defendant in Regular Civil Suit No. 626 of 2017, which is initiated by the Respondent/Plaintiff for simplicitor injunction based on title. The said title claimed to have conferred vide registered sale-deed dated 14th April, 2017 from the predecessor- in-title of the Respondent/Defendant namely Kantabai Mashal.

2. The trial Court rejected the prayer for grant of temporary injunction vide order dated 22nd March, 2018. However, the learned

District Judge reversed the same vide order impugned dated 1st October, 2018. As such, this petition by the Defendants.

3. The submissions are, transfer in favour of predecessor-in-title of the Respondent-Plaintiff was without any necessity. The suit property is an ancestral property and that being so, Suit being Regular Civil Suit No. 1704 of 2012 is pending adjudication for a decree for partition and possession, at the behest of Defendant/Petitioner.

4. According to the learned counsel for the Petitioner, without considering the aforesaid factual matrix, the Court has passed an order of injunction. Further contention of the Petitioner are, suit for simplicitor injunction is not maintainable when the title of the Respondent-Plaintiff was under cloud in view of partition suit. Drawing support from the Apex Court judgment in the matter of Anathula Sudhakar Vs. P. Buchi Reddy (dead) thru. LRs, reported in A.I.R. (2008) SC 2033, submissions are, the suit itself is not maintainable as there is denial of the title of the Respondent and that being so, an injunction ought not to have been granted.

5. It is further claimed that the transfer is also questioned on the ground that it was a mortgage transaction and as such the possession was never parted with. While countering the submissions, learned counsel for the Respondent submits that in a pending suit for partition, no relief of injunction was claimed seeking possession for more than eight years. According to him, the title documents in favour of the Respondent/Plaintiff weighed in granting injunction and as such impugned order does not call for any interference.

6. With the assistance, I have perused the plaint in Regular Civil Suit No.1740 of 2012, wherein the title-deed in favour of predecessor-in-title of the Respondent-Plaintiff executed on 11th March, 2002 is subject matter of challenge and a decree for partition is also claimed in the said suit.

7. The fact remains that for last eight years, no injunction is claimed in the said proceedings seeking prayer of possession either against the predecessor-in-title Kantabai Mashal or subsequent owner Karim Shaikh through whom the Respondent/Plaintiff succeeded to the title to the suit property.

8. Apart from above, the fact remains that the title in favour of Kantabai Mashal was conferred way-back on 8th March 2002 and the suit for setting aside said sale-deed is based on the cause of action accrued in 2011.

9. The aforesaid delay on the part of the Petitioner- defendant requires to be weighed in favour of the Respondent in the matter of grant of injunction.

10. The fact remains that denial of the title by the present Petitioner in the written statement is only to the extent of either the mortgage transaction or that of sale was not of any necessity. However, this Court cannot be oblivious to the fact that the transaction deed took place and whether such transaction was a germane or genuine can be established only in RCS No. 1704 of 2012 in the pending suit. As such, on the issue of not maintainability of the suit of Respondent/Plaintiff for simplicitor injunction cannot be accepted.

11. That being so, the suit for simplicitor injunction was very

much maintainable as against the Petitioner/Defendant at the behest of Plaintiff.

12. For the aforesaid reasons, no case for interference is made out. The Petition lacks merits, stands dismissed.

(NITIN W. SAMBRE, J.)