

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

**CIVIL WRIT PETITION NO.2205 OF 2017
WITH
INTERIM APPLICATION (ST) NO.94962 OF 2020**

Dr.J.J. Magdum Trust	..Petitioner
V/s.	
Rajmati Jaypal Magdum & Ors.	..Respondents

Mr. A. V. Anturkar, Senior Counsel a/w. Mr. U. P. Warunjikar, for the Petitioner.
Mr. Vijay Killedar, for the Respondent Nos.1 to 3 and 5.
Mr. Surel S. Shah a/w. Mr. Manoj Patil, for the Respondent No.4.

**CORAM : C.V. BHADANG, J.
RESERVED ON : 21st DECEMBER 2020
PRONOUNCED ON : 13th JANUARY 2021**

P.C.

. The challenge in this petition is to the concurrent orders passed by the Courts below, refusing to grant temporary injunction in favour of the petitioner. This petition is taken up for final disposal, by consent of parties.

2. The brief facts necessary for the disposal of the petition may be stated thus-

That land bearing City Survey No.1512, 1513 and 1514 (Block No.401) situated at Jaisingpur, District Kolhapur, is the subject matter of dispute. The petitioner is a Trust registered under the Bombay Public Trusts Act. The petitioner filed R.C.S. No.190/2015 against the respondents, for permanent injunction etc. The case made out in the plaint is that the suit property was purchased by Late Shri Dr. Jaypal Magdum, under a registered Sale Deed dated 24/4/1970 from Jangonda Patil and Narasgonda Patil. After their purchase, Dr. Jaypal Magdum by virtue of agreements dated 6/10/1989 and 20/10/1997 have given the said properties to the petitioner Trust and since then, the petitioner is in possession of the said property. The petitioner has been paying taxes in respect of the said property. It is the specific case made out that the petitioner is running Dr. J. J. Magdum Ayurvedic Medical College and Hospital in the said property. In short, according to the petitioner, the said properties were exclusively owned by Dr. Jaypal Magdum which have been voluntarily given to the Trust and the respondents have no right, title or interest in the same.

3. Dr. Jaypal Magdum expired on 14/8/2012. After his death, the respondents in connivance with the revenue officers, recorded their names in the record of rights of said property, as legal heirs of

Dr. Jaypal Magdum. According to the petitioner, the said entries are illegal and are subject matter of challenge in Appeal No.52/2015, before the District Superintendent of Land Records (DSLRL), Kolhapur. It is contended that by taking undue advantage of said entries, the respondents on 14/11/2015 came to the Ayurvedic Medical Collage and Hospital and abused the employees and threatened to take forcible possession of the said property, which matter was reported to Police Station Jaisinghpur. It is, in these circumstances, that the suit came to be filed for simplicitor permanent injunction restraining the respondents or anybody on their behalf, from interfering with the possession of the petitioner over the suit property.

4. The petitioner filed an application (Exh.5) for temporary injunction in the aforesaid terms, pending disposal of the suit.

5. The application was resisted on behalf of the respondents on various grounds. The correctness of the description of the suit property is denied. The authority of Mr. Pradeep Kulkarni claiming to be the Registrar of Trust to file the suit has also been disputed. It is the material case that suit property is not included in the PTR extract of the petitioner Trust. It was denied that Dr. Jaypal

Magdum had executed the alleged agreement dated 6/10/1989 and 20/10/1997 as alleged. It is the material case that the suit properties have been inherited by the respondents as heirs of Dr. Jaypal Magdum and they are in actual possession of the suit property as owners thereof. The respondent No.5 claimed that she is running a Book Shop and General Store on City Survey No.1512, since 1993. It is pointed out that from 1989 i.e. for a period of over 25 years the property has not been entered into the PTR extract as belonging to the petitioner Trust. All other adverse allegations were denied.

6. The learned Trial Court on hearing the parties, found that the petitioner has failed to establish the requirements of the existence of the prima facie case, balance of convenience and irreparable loss and in that view of the matter, by an order dated 4/12/2015, rejected the application.

7. The petitioners challenged the same before the learned District Judge at Jaipur in MCA No.61/2015. It appears that the petitioners produced several documents before the learned District Judge in order to establish their possession over the suit property and to demonstrate that the petitioner Trust was running

the Ayurvedic Medical College and Hospital in the suit property. The learned District Judge by a judgment and order dated 8/12/2016 has dismissed the appeal. Hence, this petition.

8. I have heard Mr. Anturkar, the learned Senior counsel for the petitioner and Mr. Shah, the learned counsel for the respondents. With the assistance of the learned counsel for the parties, I have gone through the record.

9. Mr. Anturkar, the learned Senior counsel for the petitioner has strenuously urged that the Courts below were in error in refusing to grant the temporary injunction in favour of the petitioner. Mr. Anturkar has referred to the documents in order to submit that there is voluminous record to show that the petitioner Trust was running the Ayurvedic Medical College and Hospital in the suit property. The learned counsel has then referred to the observations and the findings of the learned District Judge, while dismissing the appeal in order to submit that the learned District Judge has failed to properly appreciate the material on record and has discarded the same for reasons which are not at all germane. For instance the learned Senior Counsel has referred to the observations from para 21 onwards. It is submitted that the learned District Judge has refused

to rely on the documents for reasons such as the documents having come from the custody of the plaintiff and observing that the 'taxes can be paid by anybody'. It is submitted that the findings recorded by the learned District Judge are perverse as they are against the weight of the documentary evidence on record. The learned Senior counsel has then commented on the letter dated 16/11/2015 written by Dr. Vaijanath Yadav, in-charge Principal of the Ayurvedic Medical College. It is submitted that the said letter cannot be read in isolation in order to hold that the petitioner had lost possession of the Hospital as on 15/11/2015. In this regard, the learned Senior counsel has referred to the statement of Dr. Yadav recorded on 19/11/2015. It is submitted that the stray act of interference in the possession and running of the hospital by and on behalf of the respondents, would not mean that the petitioner had lost possession of the hospital. It is submitted that the order dated 28/1/2015 passed by the Dy. Superintendent of Land Record (DSLRL) in respect of Mutation Entry No.6768, has been set aside by the District Superintendent of Land Records Kolhapur on 22/6/2016 in Appeal No.52/2015. The learned counsel in the circumstances, prayed for remitting the matter back to the learned District Judge for deciding it afresh.

10. Mr. Shah, the learned counsel for the respondents has supported the impugned order. It is submitted that the case of the petitioner is not at all consistent as has rightly been noticed by the Courts below. It is submitted that both the agreements i.e. of the year 1989 and 1997 are bogus and in any event, cannot confer any right on the petitioner to be in possession of the suit property. It is pointed out that the agreement dated 6/10/1989 shows that Dr. Jaypal Magdum, had purportedly executed the same in his own favour as President of Dr. J. J. Magdum Charitable Trust. It is submitted that although the agreement refers to Block No.401, it is silent about the city survey numbers. The second agreement dated 20/10/1997 is purportedly executed by Dr. Jaypal Magdum as Chairman of the Trust in favour of the Principal of Dr. J. J. Magdum Ayurvedic Medical College. It is submitted that the agreement contemplates that the property is given to the Trust on rental basis. However, the suit is not filed by the petitioner in the capacity as a tenant. It is submitted that both these documents are not registered. It is submitted that the properties are not yet recorded in the PTR extract relating to the petitioner Trust. It is thus submitted that the Trial Court after appreciating the pleadings and the material on record has rightly refused to grant the injunction, particularly when as per complaint lodged on 16/11/2015 the petitioner trust had lost

possession of the suit property. It is submitted that the petitioner has suppressed this material fact while filing the suit and has not come with clean hands, thus, disentitling them to any equitable relief of temporary injunction. It is submitted that the suit simplicitor for injunction is not maintainable. On behalf of the respondents, reliance is placed on the decision of the Supreme Court in the case of (i) **Shiv Kumar Chadha Vs. Municipal Corporation of Delhi & Ors. (1993) 3 SCC 161** (ii) **Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by LRs. and Ors. (2008) 4 SCC 594** (iii) **Dalip Singh Vs. State of Uttar Pradesh and Ors. (2010) 2 SCC 114** (iv) **Amar Singh Vs. Union of India and Ors. (2011) 7 SCC 69** (v) **Badami (Deceased) By her LR Vs. Bhali (2012) 11 SCC 574** and (vi) **Agnigundala Venkata Ranga Rao Vs. Indukuru Ramachandra Reddy (Dead) by Legal Representative and Ors. (2017) 7 SCC 694.**

11. I have given my anxious consideration to the rival circumstances and the submissions made. I have considered the limited prayer on behalf of the petitioner to remit the matter back to the learned District Judge. In the context of the said submission, I have carefully gone through the judgment and order passed by the learned District Judge. It is true that the learned District Judge could not have refused to consider the documents produced, on the

ground that they are coming from the custody of the plaintiff and refusing to rely on the tax receipts on the specious ground that anybody can pay taxes. To that extent, the learned Senior counsel for the petitioner may be right. However, this in my considered view, is not sufficient to remit the matter back, as no useful purpose would be served by remitting the matter back to the District Judge for deciding the issue of grant of temporary injunction particularly at this distance of time and in the context of the pleadings and documents on record.

12. Prima facie, it can be seen that as per the case made out in the plaint, Dr. Jaypal Magdum had purchased the suit property under registered sale deed dated 24/4/1970 from Jangonda Patil and Narasgonda Patil and they have been mutated in the name of Dr. Jaypal Magdum. The specific case made out in the plaint by the petitioner, is based on the two agreements i.e. dated 6/10/1989 and 20/10/1997. The agreement dated 6/10/1989 is in vernacular and is executed by Dr. Magdum expressing his 'desire' / 'decision' to 'give' the suit property to the Trust, if the Trust is desirous of establishing a Ayurvedic or Homeopathic Medical College of 100 beds.

13. The second agreement which is dated 20/10/1997 reads thus-

I, Dr. J. J. Magdum, age 68 years R/o. Jaysingpur, Tal- Shirol, District Kolhapur, solemnly declare that, according to the agreement made on 6/10/1989. I have handed over the physical possession of my own Hospital situated at Jaysingpur in Block No.401, a three storey building to Dr. J. J. Magdum Charitable Trust, Jaysingpur.

Accordingly, on behalf of Dr. J. J. Magdum Charitable Trust, I willingly hand over the physical possession of above stated Hospital of Block No.401, to the Principal, Dr. J. J. Magdum Homeopathic Medical College, Jaysingpur on rental basis, as per valuation rules formed by B.M.C. for rent etc. and rent received be utilised for Hospital development.

This agreement was executed this day of twentyth of October in the year Nineteen Hundred Nintyseven.

Principal

Dr. J. J. Magdum

Chairman, Medical College, Jaysingpur, Dist. Kolhapur.

Dr. J. J. Magdum

Chairman, Dr. J. J. Magdum Charitable Trust, Jaysingpur.

(Emphasis supplied)

14. Both these agreements are unregistered. Prima facie, there is nothing on record to show that at any time, the Trust had paid any

rent in respect of the said premises. It can be seen that the plaintiff has not come with a clear case as to the capacity in which the petitioner is in possession of the suit property. In other words, the plaintiff should prima facie show whether it is claiming to be in possession of the property as an owner or licensee, or a tenant in order to seek injunction. The property has not been recorded in the name of the Trust in the PTR registered as yet, from the year 1989. Further, it prima facie appears that the Dy. Charity Commissioner at Kolhapur where the petitioner has filed an application under Section 19 read with Section 79 of the Bombay Public Trusts Act for recording the property in the name of the Trust, it is the case made out that the properties are owned by the Trust and Dr. Jaypal Magdum was 'professing' to be the owner of the said properties, which case is prima facie divergent with the case made out in the plaint.

15. Coming to the aspect of possession, there are several documents filed by the petitioner to show that it was running the Ayurvedic Medical College and Hospital on the suit property. Here again, some of the documents regarding the inspection reports from the Central Council of Homeopathy and Electricity Bills (page Nos.114 to 117) are pertaining to Dr. J. J. Magdum Homeopathy

Medical College and not Ayurvedic Medical College and Hospital as claimed.

16. On the contrary, the respondents have produced certain documents to show that the respondent No.5 is running a Books and Stationary Shop on C.T.S. No.1512 (Block No.401), Lane No.11, at Jaisingpur which is part of the subject matter of dispute. Prima facie, there are documents to show that the said shop is registered under the Shops and Establishment Act in the name of the respondent No.5. There are also certain electricity bills in respect of said shop, in the name of respondent No.5 Smt. Shobha Magdum.

17. Coming to the issue whether the petitioner had lost possession on the date of the suit, prima facie there is a letter dated 16/11/2015 addressed by the In-charge Principal Dr. Vaijanath Yadav to the DSP Kolhapur stating that the family members of Late Jaypal Magdum have 'taken possession' of the hospital. There is an order dated 18/11/2015 from the DSP asking for a report from the Sub-Divisional Police Officer Jaysingpur for providing police protection for 'restoration' of the possession. The learned Senior counsel for the petitioner has referred to the statement dated 19/11/2015 of Dr. Vaijanath Yadav in order to submit that

possession of the hospital was never lost and there was only an interference with the possession. At this stage, it can be seen that there are documents filed by both the parties. On one hand, it can be seen that the some of the inspection reports and the electricity bills are in respect of the Homeopathy College and Hospital and not Ayurvedic College and Hospital as claimed and on the contrary, on the part of the suit property i.e. C.T.S. No.1512, there are documents to show that respondent No.5 is running a Books Shop and General Stores. Considering the over all circumstances, I do not find that the petitioner has established a prima facie case.

18. Coming to the issue of balance of convenience and irreparable loss, the petition is without any interim relief from the year 2015. Admittedly, there are no documents to show possession of the petitioner over the suit property post 2015. Thus in my considered view, even the requirements of the irreparable loss and balance of convenience cannot be said to be satisfied. Normally, temporary relief is of an emergent nature and it is not possible to envisage grant of such relief at this distance of time. The petition is accordingly dismissed, with no order as to costs.

At this stage, there is a joint request by the learned counsel for the parties, for expediting the suit. It is pointed out that

the pleadings in the suit are complete and the Courts have resumed physical hearings.

In that view of the matter, the trial of the suit is expedited. The learned Trial Court shall proceed to decide the suit as expeditiously as possible and preferably within a period of one year from the receipt hereof.

The parties to co-operate for the time bound disposal of the suit.

It is made clear that the observations herein are of a prima facie nature, for the limited purpose of deciding the issue of temporary injunction and the learned Trial Court shall not be influenced by the same, at the trial of the suit. The rival contentions of the parties are left open.

In view of disposal of petition, all pending civil applications are disposed of.

C.V. BHADANG, J.