

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

WRIT PETITION NO. 13337 OF 2017

Mohammed Ilyas Abdul Hafiz & Anr. ... Petitioners
Vs.
Shahid Gulam Nabi Patel & Ors. ... Respondents

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Mr. Sachin Ramrao Pawar for the Petitioners.
Mr. Raju Digamber Suryawanshi for the Respondent Nos.1 to 3.

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CORAM: MADHAV J. JAMDAR, J.

DATE : 10th AUGUST, 2021.

P. C. :-

1. The Petitioners (original Defendant Nos. 1 and 2) by the present Writ Petition filed under Article 227 of the Constitution of India are challenging legality and validity of order dated 10th January, 2017 passed by the learned District Judge-5 and Additional Sessions Judge, Thane in Miscellaneous Civil Appeal No. 122 of 2016.

2. By the impugned order Appeal filed by original Plaintiffs i.e. present Respondent Nos. 1 to 3 bearing Miscellaneous Civil Appeal No. 122 of 2016 was partly allowed and both Plaintiffs and Defendant Nos. 1 and 2 were directed not to create any encumbrance by any mode till decision of the suit. The Respondent Nos.1 to 3 filed said Miscellaneous Civil Appeal No. 122 of 2016 challenging the legality and validity of order dated 28th April, 2016 passed below Exhibit-5 in R.C.S. No. 40 of 2016. By the said order, Exhibit-5 application filed by the Respondent Nos. 1 to 3 i.e. original

Plaintiffs was rejected and the learned Appellate Court modified the said order as set out hereinabove.

3. Mr. Sachin Pawar, learned counsel appearing for the Petitioners submitted that as a result of the impugned order, the injunction is granted against the owner of the property. He submitted that the Petitioners purchased the property by registered sale deed dated 24th April, 2001 from Defendant No.3 i.e. present Respondent No.4. He submitted that by taking disadvantage that there is no revenue entry regarding the said sale deed, the Respondent Nos.1 to 3 purchased the suit property from Respondent No.4 by registered sale deed dated 18th February, 2008. He submitted that the Respondent No. 4 has no right, title and interest after execution of the sale deed dated 24th February, 2001 in favour of the Petitioners and therefore, the Respondent Nos. 1 to 3 could not get any right, title and interest on the basis of registered sale deed dated 18th February, 2008. He submitted that the learned Appellate Court without considering these aspects set aside order of rejecting Exhibit-5 application passed by the learned Trial Court.

4. Mr. Suryawanshi, learned counsel appearing for the Respondent Nos.1 to 3 on the other hand submitted that by the impugned order dated 10th January, 2017 interest of both the parties is protected. He submitted that the said order is in operation for last about more than four years. He submitted that trial has started and therefore, Writ Petition be dismissed.

5. The factual position on record shows that the Petitioners have purchased the suit property from Respondent No.4 by registered sale

deed dated 24th April, 2001. The same property was sold by Respondent No.4 to the Respondent Nos. 1 to 3 by registered sale deed 18th February, 2008. However, it is obvious that Respondent No.4 will have no right, title and interest with respect to the suit property after executing registered sale deed dated 24th April, 2001 in favour of the Petitioners. Thus, it is very clear that Respondent No. 4 could not pass any title in favour of the Respondent Nos. 1 to 3 and therefore, the Respondent Nos. 1 to 3 could not acquire any title even if registered sale deed dated 18th February, 2008 was executed in their favour by the Respondent No. 4.

6. The learned Trial Court while rejecting the Exhibit-5 application has specifically observed that the Respondent No.4 i.e. Defendant No.3 has not denied her signature on the registered sale deed dated 24th April, 2001 executed in favour of the Petitioners and she has not pleaded any fraud or forgery by the Petitioners in executing said registered sale deed.

7. The registered sale deed in favour of the Petitioners is dated 24th April, 2001. The said sale deed is not challenged by Respondent No.4 i.e. the vendor of the Petitioners. The Respondent Nos. 1 to 3 who claims to have purchased the suit property from Respondent No.4(who has no right, title and interest after execution of registered sale deed dated 24th April, 2001 in favour of the Petitioners) on 18th February, 2008 have filed suit in 2016 seeking declaration that the sale deed executed in favour of the Petitioners dated 24th April, 2001 is sham and bogus. It is significant to note that the present suit is filed after about 15 years after execution of registered Sale-Deed dated 24th April, 2001. It is also significant to

note that the Respondent No.4 has not filed the said suit and the same is filed by the Respondent Nos. 1 to 3. Once Respondent No. 4 has executed sale deed dated 24th April, 2001 in favour of Petitioners there is no question of she having any right, title and interest with respect to the suit property and therefore, she could not have executed registered sale deed dated 18th February, 2008 in favour of the present Respondent Nos. 1 to 3.

8. The learned Appellate Court while allowing the Appeal has observed that although the Petitioners are the earlier purchasers they failed to enter their names in the revenue record. It is further observed that Plaintiffs i.e. Respondent Nos. 1 to 3 would require to prove that transaction in their favour is bonafide transaction without notice of the prior transaction in favour of the Petitioners. The said observations of the learned Appellate Court are without taking into consideration the aspect that the Sale Deed dated 24th April, 2001 in favour of the Petitioners is registered document. It is settled legal position that revenue entries are only for fiscal purpose and they do not confer any title. The execution of sale deed on 18th February, 2008 in favour of the Respondent Nos. 1 to 3 inspite of existence of registered sale deed dated 24th April, 2001 in favour of the Petitioners prima facie show that the transaction in favour of the Respondent Nos. 1 to 3 is not bonafide and with complete notice of prior transaction. It is also to be noted that once Respondent No.4 executed registered sale deed in favour of present Petitioners on 24th April, 2001, the Respondent No.4 will have no right, title and interest in the suit property and therefore, no title passes to the Respondent Nos. 1 to 3. Therefore, the Respondent Nos. 1 to 3 i.e.

Plaintiffs have failed to prove prima facie case. There is no balance of convenience in their favour. They will not suffer any irreparable loss.

9. In view of above, the impugned order dated 10th January, 2017 passed by the learned District Judge-5 and Additional Sessions Judge, Thane in Miscellaneous Civil Appeal No. 122 of 2016 is quashed and set aside and order passed by the learned 4th Joint Civil Judge, Junior Division, Bhiwandi below Exhibit-5 in R.C.S. No. 40 of 2016 rejecting Exhibit-5 application is restored.

10. However, it is clarified that the observations made in this order and the order passed by learned Trial Court while deciding Exhibit-5 application are prima facie observations made for the purpose of disposing of interim application. The learned Trial Court to dispose of R.C.S. No. 40 of 2016 uninfluenced by observations made in this order and in the order passed below Exhibit-5.

11. Mr. Suryawanshi, the learned counsel appearing for the Respondent Nos. 1 to 3 states that the Plaintiffs' evidence has started and therefore, requests that hearing of the suit be expedited. In the facts and circumstances of this case, the hearing of R.C.S. No. 40 of 2016 is expedited and the concerned learned Civil Judge, Junior Division, Bhiwandi is requested to dispose of the same within a period of two years from the receipt of this order.

12. Writ Petition is disposed of in the aforesaid terms.

(MADHAV J. JAMDAR, J.)

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