

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2737 OF 2021

Shri. Yashwant Bhiva Shinde Petitioner

Vs.

Ganpat Dhondiba Shinde Respondents
(deceased thru legal heirs)
Shri. Rahul Ganpat Shinde & Ors.

Mr. Venkatesh A. Shastry for Petitioner
Mr. Manoj P. Patil for Respondents

Coram : NITIN W. SAMBRE, J.

Date : 16th JULY, 2021

P.C.:

1. Heard Mr. Venkatesh Shashry, learned counsel appearing for the Petitioner and Mr. Manoj Patil, learned counsel appearing for the Respondents. By consent, the petition is taken out for final disposal.

2. The Petition is directed against the order dated 23rd March, 2021 passed in Miscellaneous Civil Appeal No.131 of 2019 preferred by the Respondents/original Defendants, whereby the Appellate Court in

exercise of powers under Order 43, Rule 1(r) of the Code of Civil Procedure, 1908 set aside common order dated **11th** March, 2019 passed below Exhibit 5, an application for temporary injunction preferred by the Respondents and also application Exhibit 36A preferred by the present Petitioner in Regular Civil Suit No. 239 of 2016 and allowed the application, Exhibit 5 thereby restrained the present Petitioner-Defendant from obstructing the peaceful possession of the Respondent-Plaintiff upon the suit property.

3. The Respondents-Plaintiffs are restrained from creating third party interest in regard to the suit property at the behest of the Petitioner.

4. The facts necessary for deciding the present petition are as under :

The suit is preferred by the Respondents/Plaintiffs being Regular Civil Suit No. 239 of 2016 on the file of 4th Joint Civil Judge, Junior Division, Vadgaon Maval, District Pune claiming an injunction based on title dated 13th March 2000 to the suit property. Application

Exhibit 5, based on the title for grant of temporary injunction thereby restraining the Petitioner-Defendant from interfering with the settled possession was rejected by the learned trial Court, whereas Application, Exhibit 36(A) preferred by the Petitioner came to be allowed, whereby the Respondents/ Plaintiffs were restrained from causing obstruction to the possession of the Petitioner-Defendant to the suit property and the Respondent-Plaintiff are further restrained from creating any third party interest.

5. Mr. Shastry, learned counsel for the Petitioner while questioning the order impugned would urge that even through there is a registered sale-deed dated 13th March, 2000, same was kept pending and after completion of necessary formalities Index-II was issued on 2nd February, 2014. According to him, possession receipt was never executed by the Petitioner-Defendant in favour of Plaintiffs during above period and as such the revenue entry to that effect remained in favour of the Petitioner. He would invite attention of this Court to the order dated 30th April, 2016 passed by Circle Officer, Vadgaon, thereby

cancelling the revenue entry in favour of the Respondent- Plaintiff. So as to substantiate his contention, he would invite attention of this Court to Clause 157 of the Maharashtra Land Revenue Code, 1966, so as to press point of presumption of correctness of the revenue entries. He would further claim that Rule 17 of Record of Rights and Registration Rules is flouted by the Respondent. According to him, 7/12 extracts speaks of long settled possession of the Petitioner over the suit property and that being so, the learned Appellate Court committed an error in granting injunction in favour of the Respondent and rejecting the prayer for temporary injunction of the Petitioner.

6. While countering the aforesaid submissions, Mr. Patil, learned counsel appearing for the Respondent-Plaintiff would support the order impugned passed by the Appellate Court. He would invite attention of this Court to the registered sale-deed, mutation entry, challenge raised to the cancellation of the entry and other evidence such as photographs, location of the property adjacent to the house of the Respondent-Plaintiff etc. According to him, order of grant of injunction is justified.

7. Considered rival submissions.
8. The challenge to the sale deed dated 13th March, 2000 by way of counterclaim at the behest of the Petitioner is based on theory of the misrepresentation. It is the case of the Petitioner that the Respondent-Plaintiff misrepresented the Petitioner- Defendant by giving false promise of getting acquisition proceedings completed expeditiously and got the sale-deed executed, taking undue advantage of their illiteracy. If the aforesaid theory of the Petitioner is appreciated, it has come on record that the parties to the Petition are illiterate. The acquisition of the property was completed vide award dated 10th June, 1998. The property was sold vide registered sale-deed dated 13th March, 2000 in favour of the Respondent. However, the said document was kept pending till 2014 and was cleared in favour of the Respondents/Plaintiffs.
9. The registered sale-deed in the form of Index-II appears to have been issued in favour of the Respondent-Plaintiff on 2nd February,

2014. The recital in the sale-deed specifically speaks of handing over of the possession of suit property by the Defendants' predecessor who have executed the sale-deed in favour of Plaintiffs.

10. As such there is presumptive value to the registered sale-deed in favour of the Plaintiffs in regard to passing of title.

11. Even if, we consider the case of the Petitioner, based on mutation entry in 7/12 extract in their favour, it is settled law that said mutation entry has evidentiary value only for the fiscal purposes.

12. Once the award in relation to the part of property owned by the Petitioner was passed on 10th June, 1998, the claim that illiteracy of the Petitioner was put to jeopardy i.e. of getting sale-deed executed under the pretext of completing the acquisition proceedings.

13. The other documentary evidence speaks of settled possession of the Respondent-Plaintiff over the suit property. The Respondents-Plaintiffs are restrained by the appellate Court from

creating third party interest and as such the interest of the Petitioner-Defendant is already safeguarded.

14. In the aforesaid backdrop, view expressed by the learned appellate Court while delivering the impugned judgment appears to be just and proper.

15. No case for interference in extra ordinary jurisdiction is made out. The Writ Petition fails, stands dismissed.

(NITIN W. SAMBRE, J.)