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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12920 OF 2019

Mrs. Vithabai Sopana Pawar and Ors

....Petitioners

V/s.

Jaiprakash Sitaram Goel and Ors

....Respondents

Ms. Prachi A. Tatake for the Petitioners

Mr. A. V. Anturkar, Senior Advocate i/b Mr. Sugandh B. Deshmukh
for Respondents

CORAM : NITIN W. SAMBRE, J.

DATE: FEBRUARY 15, 2021.

P.C.:

1] RCS number 1479 of 2015 came to be initiated by the Petitioner-Plaintiff for partition, separate possession, declaration of sale deed and confirmation deeds as illegal.

2] Application Exhibit 5 for grant of temporary injunction came to be allowed by the learned Trial Court vide order dated 28th April 2016 passed by Jt. Civil Judge Junior Division Pune whereby Respondent-Defendant Nos. 16, 17 and 19 are restrained from

creating third party interest or from disturbing the possession of the Petitioner over the suit property.

3] Respondent feeling aggrieved, preferred MCA No. 307 of 2016 which came to be allowed vide order dated 26th November 2019 passed by learned District Judge- 4 Pune. As such this petition.

4] Learned counsel for the Petitioner would invite attention of this court to the family tree described in the plaint. According to her Mahadu was blessed with two sons namely Rambhau and Lakshman. Rambhau alleged to have married twice, initially with Muktabai and later with Chinkabai. As far as the alleged marriage with Chinkabai is concerned, Petitioner-plaintiffs are claiming that no such marriage was performed by Rambhau. That being so, mutation entries or any share claimed by Chinkabai based on alleged theory of oral partition is far away from the truth. That being so, the Defendant cannot act upon the alleged sale deed or consent deed so as to bind the Petitioner-plaintiff. By virtue of their succession to the share through their mother Muktabai, Petitioners have claimed that they

are in a settled possession of the property of which transaction is carried out by the Defendants particularly Defendant Nos. 16, 17 and 19. It is further claimed that since there is long-standing possession of the Petitioner, Respondent-Defendant be restrained from creating third party interest in regard to the suit property or to disturb their possession.

5] While countering the aforesaid submissions, Shri Anturkar learned senior counsel for Respondent would urge that transfer of shares in favour of Respondent-Defendant is based on mutation entries as were carried out and recorded way back by the revenue authorities i.e. by virtue of mutation entry number 12980. Apart from above, according to him, Defendant Nos. for 4 to 18 have already executed confirmation deed on September 5, 2000 and 18th July 2001. That being so, Court below was justified in vacating the injunction.

6] Considered submissions.

7] It is apparent from the mutation entry number 12980 that mutation was effected in regard to the Suit property pursuant to the provisions of Maharashtra Land Revenue Code on 4th December 1989. Based on the said mutation entry, it appears that sale deed came to be executed in favour of the contesting Defendants based on Power of Attorney on 13th November 1995. It appears from the revenue record that oral partition was acted upon and that being so share was allocated in the name of Chinkabai and the elder son of Rambhau born from Muktabai that is Sopana.

8] It appears that Petitioners are claiming their share in the suit property by virtue of their succession having been born to Muktabai from Rambhau. Petitioner Vithabai claim to have succeeded to the share of Rambhau through Sopana in entirety however revenue record speaks otherwise.

9] The aforesaid revenue records which has presumptive value in law are rightly relied by the Appellate Court for vacating the injunction. Revenue record which is relied on by the Respondents is

maintained under the provisions of Maharashtra Land Revenue Code which has presumptive value. As such, said revenue record is rightly relied on by the Appellate Court while vacating the injunction. This Court is required to be sensitive to the fact that in the recitals of the sale deed so also consent deeds, a specific mention is about handing over the possession of Respondent nos. 16 to 19 is already made. The status of the Petitioner as that of co-owner of course cannot be disputed particularly when he having succeeded to the interest of Rambhau which fact is not disputed by the Respondent nos. 16 to 19 by their conduct. In the aforesaid background, no case for grant of injunction is made of. Petition as such fails, dismissed.

10] After dismissing the Petition, it is informed and prayed that there is an interim relief operating by virtue of injunction granted by the trial court since 2015 which may be continued for a period of 6 weeks.

11] Shri Deshmukh learned counsel for Respondent objected the said prayer.

12] However having regard to the fact that Petitioners are claiming to be in possession of the property, it will be appropriate to continue the interim relief for a period of six weeks from today.

[NITIN W. SAMBRE, J.]