

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.5906/2019

Narendrakumar Bhagwandas Gorasiya

...Versus...

Smt. Kaushika Rasiklal Gorasiya and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri S. A. Mohta, Advocate for petitioner.

Shri S. C. Joshi, Advocate for respondent nos.1 and 2.

CORAM : AVINASH G. GHAROTE, J.

DATE : 02/09/2021

Heard Mr. Mohta, learned counsel for the petitioner
and Mr Joshi, learned counsel for the respondents no.1 and 2.

2. A suit for declaration that the shop Nos.29 and 29-A situated at New Cloth Market, Akola, is the property of the partnership firm and the defendants are not having any individual ownership rights and authority to transfer, assign or deal with the property is filed by the petitioner who is the plaintiff before the Trial Court. An application under Order 39 Rule 1 and 2, came to be filed by the present petitioner, in the said suit seeking a relief of restraining the defendants from creating any third party interest therein. The application came to be rejected, by the learned Trial

Court by an order dated 18.7.2018, holding that a prima facie case to grant such an injunction was not made out and in any case, if there was transfer the same would be covered by the principle of *lis pendens* as contained in Section 52 of the Transfer of Property Act, 1882, and the plaintiff therefore, would have a remedy to either continue with the suit as it with the subsequent purchaser being bound by its result, or add such subsequent purchaser as a party to the suit by challenging the document of transfer. It was further recorded that the transfer of the said shops in favour of the defendants had been approved by the Assistant Registrar by his order dated 10.3.2017, which has been confirmed by the Deputy Registrar Co-operatives Societies by his order dated 21.11.2017, challenge to which made by the plaintiff came to be dismissed. It was therefore, held that the challenge as laid in the suit that the transfer of the said shops in favour of the deceased Rasiklal the husband of the defendant no.1, was a nominal one will have to be tested on the merits. The appeal as against the same also came to be dismissed by the Ad-hoc District Judge - 1 by its judgment dated 12.2.2019, who rendered the findings that there was no document placed on record to arrive at a finding about any

nominal transfer, in view of which, considering the orders passed by the Authorities under the Maharashtra Cooperative Societies Act, the appeal came to be dismissed.

3. Mr. Mohta, learned counsel for the petitioner, submits that both the Courts have failed to consider that the transfer in favour of the deceased Rasiklal of the said two shops was nominal and so also did not consider the Deed of dissolution of the partnership firm and its effect upon the said property, as a result of which, the impugned order and judgment cannot be sustained.

4. Mr. Joshi, learned counsel for the defendants at the outset categorically admits that both the shops are in possession of the plaintiff, who is conducting the business from shop no.29 and shop no. 29-A has been leased out by the plaintiff.

5. In view of this specific admission regarding the absence of possession of the defendants in respect of the said shops, the apprehension by the plaintiff, is clearly unfounded as the defendants cannot take possession of the same without following due process of law. It is equally clear that any transfer of the said property by the defendants would clearly be subject to the result of the suit and also hit by the principle of *lis pendens* as contained in

Section 52 of the Transfer of Property Act. Nothing has been placed on record to substantiate the apprehension of the defendants intending to create third party interest in the suit property and in any case, if the same is done in future, it will be subject to the result of the suit as found by the learned Trial Court.

6. In that view of the matter, I do not see any infirmity in the impugned order and judgment. The petition being without merit therefore is dismissed.

7. It is made clear that any *prima facie* observations made in the impugned order and judgment, shall not affect the merits of the matter. The trial of the suit is expedited.

(AVINASH G. GHAROTE, J)