

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13562 OF 2021

GAYASODDIN AJIMODDIN KADRI
VERSUS
LEELA ALIAS SHARADA GANPATRAO SAKHARE THROUGH GPA
HOLDER GANPATRAO NAMDEV SAKHARE AND OTHERS

Mr.Irfan D.Maniyar, Advocate for the petitioner.

(CORAM : BHARATI H. DANGRE, J.)

DATE : FEBRUARY 18, 2022

PER COURT :

1. Heard the learned Advocate for the petitioner, who is aggrieved by the order passed below Exh.5 by the learned Civil Judge, J.D. Kaij in RCS No.20/2014, which is a suit filed by the plaintiff for temporary injunction, in which he is impleaded as defendant No.1. The said order has been upheld in MCA No.23/2014 where the appeal filed by the petitioner is dismissed.

2. The plaintiffs instituted a suit for perpetual injunction by describing the suit property in paragraph No.2 of the plaint as House No.4985/5 with the boundaries being described therein. The cause of

action is pleaded to the effect that in the wake of the sale deed being executed, the defendant No.2 had sold the said property for consideration of Rs.1,10,000/- to the plaintiffs and they were put in possession of the said land but since there was an attempt to create an obstruction by defendant No.2 and though defendant No.1 who is not at all concerned with the suit property, the injunction is sought for.

The defendant No.1 filed his written statement and in paragraph No.8, he referred to a property located in Survey No.32/1 with the description given in paragraph No.8 of the written statement as being purchased by him and it is pleaded that the possession of this property is enjoyed by him and he is also the owner of the said property. It is also pleaded by him that the Survey No.32/1 is an *Inam* land and therefore the suit, which is filed by the plaintiffs, is not maintainable in the wake of Section 85 of the Wakf Act.

3. In the wake of the rival pleadings, the application filed below Exh.5 came for consideration and the learned Judge on recording the claim stake by the plaintiffs, that they have purchased the said suit property by registered sale deed dated 22/11/2019 from defendant No.2 and has mutated his name in the Gram Panchayat record, prima

facie record a finding that the plaintiffs are in possession of the suit property since the time of its purchase and the erstwhile owner was defendant No.2. Considering the written statement filed by the defendants and particularly an objection being raised about the property being Wakf Property, the learned Judge record that the plaintiffs in support of Exh.5, have filed their sale deed, extract of mutation entry of 8690, tax payment receipt issued by Nagarpanchayat Office, Kaij for the payment of tax of house No.4985/5 dated 24/12/2013, copy of the entry of House No.4985/5 kept in the property tax register, Gram Panchayat Kaij, for the year 2001-2002. In the wake of the said documents placed on record, the learned Judge prima facie arrived at a conclusion that the plaintiffs have purchased the suit property by registered sale deed and the certified copy of the sale deed placed on record reveal that one Kaji Badiuddin i.e. defendant No.2 had executed a sale deed in the year 2003 in which the property mentioned in the sale deed is bounded by the 4 boundaries set out therein. On perusal of the Ferfar entry No. 8690 dated 25/10/2005, it reveals that the boundaries match with the boundaries mentioned in the sale deed and on perusal of the tax receipt as well as the assessment list of the suit property in the office of the Gram Panchayat, Kaij, the

property prima facie is recorded in the name of the plaintiffs.

4. As far as the documents filed by defendant No.1 i.e. 7/12 extract vide Exh.46, 47, 48 and 49, the learned Judge has rendered a finding that in these extracts, nowhere the name of this defendant appear qua the entry in the revenue record as regards Survey No.32/1. On the other hand, the learned Judge clearly record that from the documents filed by the defendants, the claim stake is completely contrary.. On Ferfar No. 4773, wherein the name is entered in the revenue entry, it is recorded that the entry is taken by the Gram Panchayat Kaij on the basis of the simple sale deed and on his application. A finding is, therefore, recorded to the effect that defendant No.1 has no document in his possession qua the suit property, but he is claiming his possession over Survey No.32/1.

Recording a prima facie case in favour of the plaintiffs as against the claim stake by the defendants and on appreciation of the legal position that injunction is an equitable relief, the application Exh.5 has been allowed.

This finding is upheld by the Appellate Court by a reasoned order, by recording that the plaintiffs are prima facie in possession of the suit

property and they had made out a case of temporary injunction and unless the defendants prove their ownership over the suit property, they cannot dispossess the plaintiffs even by following process of law. The Appellate Court also specifically record a finding that the defendants have no concern with the suit property.

5. In these circumstances, since the concurrent findings are recorded by the two Courts below and on perusal of the plaint as well as the written statement and the reasonings contained in the impugned orders, I am not convinced by the argument advanced by the learned Advocate for the petitioner to the effect that the said order calls for any interference.

6. Upholding the impugned orders, the writ petition is dismissed.

(BHARATI H. DANGRE, J.)