

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9071 OF 2022

Farooq Ahmed Haji Bashir And Another ..Petitioners

Versus

Sayed Masood Sayed Hyder And Others ..Respondents

Mr. Pathan Hamzakhan I., Advocate for the petitioners.

Mr. G.R. Ingole, Advocate for respondents No. 3,4 and 7.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 3rd OCTOBER, 2022

ORDER :

1. The petitioners are aggrieved by the judgment of learned Adhoc District Judge-1, Nanded in Miscellaneous Civil Appeal No. 58 of 2022.

2. The petitioners/original plaintiffs have filed a suit for declaration and ownership in respect of 40 Are land out of Gut No. 591, totally admeasuring 2 Hectare 78 Are, situated at Village Ardhapur, Taluka- Ardhapur, District- Nanded and a declaration that sale deeds executed in favour of defendants No. 10 to 12 in respect of the suit land be declared null and void. Perpetual injunction is also sought, not to disturb peaceful

possession of the plaintiffs. The suit is resisted by the defendants by filing written statement. Along with suit, application Exhibit-5 is filed for temporary injunction, which is allowed by the Trial Court. The Appellate Court has modified the order passed by the Trial Court and directed that injunction shall operate only to the extent of 40 Are land, which is in possession of the plaintiffs. Hence, the present petition.

3. I have give due consideration to the rival submissions of learned advocate for the petitioners and learned advocate for respondents No. 3, 4, and 7. Perused the grounds taken in the writ petition, documents filed along with the same and the impugned orders.

4. The petitioners are claiming possession of the land in question on the basis of agreement of sale executed by Ayyub Ali Khan, predecessor of defendants No. 1 to 9, in favour of the petitioners. The petitioners have purchased land in question from him by way of sale deed dated 01.01.2014. The Trial Court allowed application Exhibit-5 filed by the petitioners thereby granting temporary injunction against the defendants mainly on the ground that, the sale deed of the plaintiffs is earlier one and

both, the plaintiffs and the defendants have not filed any receipt or documents to show that they are cultivating the land in question and it is clearly mentioned in the sale deed produced by the plaintiffs that possession is delivered. Since, the sale deed of the plaintiffs is earlier one and if the property is alienated irreparable loss would be caused to the plaintiffs, the Trial Court allowed the application.

5. The Appellate Court on the other hand, has taken into consideration the fact that the registered sale deed executed in favour of the plaintiffs shows that the plaintiffs are in possession of 40 Are land which was handed over to them. The Appellate Court has further considered that the defendants No. 1 to 9 have executed sale deed of the suit land including 40 Are land of the plaintiffs in favour of defendants No. 10 to 12 on 25.05.2021. Considering this aspect, the Appellate Court has modified the injunction order and directed that the defendants shall not cause any obstruction to the possession of 40 Are land in Gut No. 591 situated at mouje Ardhapur, District- Nanded, having four boundaries mentioned in the sale deed of the plaintiffs.

6. It appears from the record that neither the plaintiffs nor defendants have placed on record any document to prove their possession. Except agreement of sale executed in favour of plaintiffs by power of attorney holder of defendants No. 1 to 9, wherein a statement is made that the possession is handed over, there is nothing on record to support the contention of the plaintiffs that total suit land is handed over to them. On the other hand, registered sale deed is executed by defendants No. 1 to 9 in favour of defendants No. 10 to 12, wherein a specific recital is there that possession is handed over to them. In that view of the matter, this Court is of the opinion that the Appellate Court is justified in modifying the interim injunction order passed by the Trial Court. Taking into consideration the facts of the case, the Appellate Court has passed a well reasoned order and rightly modified the order passed by the Trial Court. No illegality or perversity is found in the order impugned in the present petition. The writ petition is therefore dismissed. No costs.

[NITIN B. SURYAWANSHI, J.]