

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13478 OF 2021

DHAIRYASINH SHIVAJIRAO DESHMUKH AND ANOTHER
VERSUS
VILASRAO VINAYAK DHANAVE

Mr.A.R.Devakate, Advocate for the petitioners.

(CORAM : BHARATI H. DANGRE, J.)

DATE : JANUARY 12, 2022

PER COURT :

1. The petitioners, who are original defendants in RCS No.662/2018 filed by the plaintiff/respondent seeking declaration of his ownership and praying for injunction in respect of the suit property, which is claimed to have been purchased by him from the defendants by a registered sale deed dated 22.08.2014 and on parting with the agreed consideration. The plaintiff claimed that since the date of the sale deed, he is in possession of the suit property and has developed the property and enjoying the fruits thereof. Another RCS No.688/2018 is also filed by the same plaintiff (the respondent herein), seeking recovery of amount from petitioner No.2.

The stand of the present petitioners in the respective suits is that

the defendant is engaged in money lending and the sale deed was executed as a security for the amount of loan advanced.

2. In RCS No.662/2018, an application for temporary injunction was filed and the learned Jt.Civil Judge J.D. Paranda on 07/12/2018 by recording prima facie case and balance of convenience in favour of the plaintiff, was pleased to allow Exh.5, thereby restraining the defendants and anyone claiming through them from obstructing his possession over the suit property.

The said order passed on 07/12/2018 came to be upheld by the learned Ad-hoc District Judge, Bhoom on 11/02/2020 when the Misc.Civil Appeal No.01/2019 filed by the petitioners came to be rejected.

On perusal of the impugned orders and the reasonings discerned from both the orders, the learned Courts have failed to by the argument of the petitioners that the sale deed was executed by way of security and that is the reason no survey number has been appearing. By recording that the defendants to the suit had an opportunity to mutate their names but have not mutated their names and since the revenue entries in the record of rights reflect the name of the plaintiff in the

ownership column, which is not rebutted, contention of the defendants is not accepted. Though the affidavits of the neighbours came to be filed by the defendants, the Courts below refused to rely upon the said affidavits in the light of the registered sale deed.

3. Therefore, I am not convinced with the argument advanced, calling for reversing the impugned orders.

In any case, the injunction in operation in favour of the plaintiff from the year 2018, which has been now confirmed by the First Appellate Court and I am not convinced to interfere with the same. However, since the regular civil suit is filed in the year 2018, with a direction being issued to the learned Civil Judge, J.D. Paranda, to dispose off the proceedings in RCS No.662/2018, within a time bound manner and preferably within a period of 6 (six) months from today, since it is informed by the learned counsel for the petitioners that the evidence affidavit of the plaintiff is already on record. While refusing to entertain the writ petition, with a limited direction being issued to the learned Trial Court to conclude the proceedings No.662/2018 within a period of 6 months from today, the writ petition is disposed off.

Needless to state that the observations made are limited for the

purpose of adjudicating the claim in the writ petition and the learned Judge of the Trial Court shall not be influenced by the said observations.

(BHARATI H. DANGRE, J.)