

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.294 OF 2019

JAGDISH ASHOK RAJEGAIKWAD
VERSUS
RAGHUNATH NANA GAIKWAD AND ANOTHER

Mr.Abhishek Kulkarni, Advocate for the petitioner.
Mr.S.P. Salgar h/f Mr.N.V.Gaware, Advocate for the respondents.

(CORAM : BHARATI H. DANGRE, J.)

DATE : JANUARY 12, 2022

PER COURT :

1. The petitioner, who is the original plaintiff, has instituted RCS No.185/2015 before the learned Civil Judge, Jr.Division, Karjat for Specific Performance of Contract. The suit being instituted on 05/09/2015, the plaintiff sought an order against the defendants that they should not create any third party interest and the defendants have abided by the said order.

The plaintiff filed an application below Exh.35, seeking temporary injunction in the nature of restraining the defendants from obstructing his peaceful possession. This application came to be rejected on 23/01/2017 and the said order is upheld by the Appellate Court on 08/08/2018 when his appeal came to be dismissed by the

District Judge, Ahmednagar. The concurrent findings recorded by the Courts below is to the effect that the plaintiff has prima facie failed to show his possession upon the suit property.

2. The injunction has been declined in favour of the plaintiff by the concurrent findings rendered in a suit filed by him in the year 2015 though in view of the restrain order, the defendants have not created any third party interest.

3. On an application being filed vide Exh.35, filed by the plaintiff praying for temporary injunction and by pleading that the plaintiff is the owner of the suit property through a sale deed and property stands mutated in their name in the Land Records, the Trial Court refused to accept the said argument by recording that the suit is filed for specific performance and the plaintiff is seeking direction to the defendants to execute a registered sale deed in their favour. The learned Trial Court has recorded that on perusal of the document at Exh.44, which is a copy of the agreement, do not disclose that the possession has been handed over to the plaintiff and as far as the mutation entry is concerned, objection has been raised to the same and therefore it has not been confirmed, the application vide Exh.35 has been rejected.

On an appeal being filed, the said finding has been confirmed by the Appellate Court and the Appellate Court has recorded that the defendants are admitting their signatures upon the sale deed but according to them, they have not received the full and final consideration in respect of the suit properties and questioning the intention of the parties, the entire consideration was recede then why the sale deed was not registered on the same date, has recorded that it creates a doubt about the transaction between the plaintiff and defendants. The Appellate Court has written the following findings :-

"15..... This fact creates some doubt regarding the alleged transaction in between the plaintiff and defendants. If really full and final consideration amount of the suit properties were paid by the plaintiff to the defendants and when they were put their signatures on a sale document, then why the same is not immediately or on the same day got registered before the Sub-Registrar, Karjat. This aspect is not properly explained by the plaintiff. No doubt, for that purpose, it is necessary to give an opportunity to the parties to lead their evidence in a suit in that regard. But, at least, the plaintiff must prima facie establish or show a sufficient cause as to what was the problem to register his sale document on the date of its execution.

16. On perusal of the sale deed of plaintiff, it reveals that there are the contents therein regarding a delivery of possession of the suit property to him by the defendants. It also appears that later on the plaintiff got registered the said document before the Sub-Registrar,

Karjat. But, it reveals that while registering the said sale deed, both the defendants were absent. In other words, the plaintiff got registered his sale deed in the absence of defendants. In their reply, the defendants have specifically contended that they have not received the full and final amount of the consideration of the suit properties from the plaintiff, and hence, they remained absent for the reregistration of the said sale deed. These contents of the defendants prima facie found to be trustworthy, because if really the transaction of sale was finally completed, then why its registration kept back by the defendants ? This aspect needs to be decided on merits only.

17. No doubt, according to the plaintiff, he is in possession of the suit properties since the execution or signing of the defendants on his sale documents. It is a fact that the plaintiff's name has been entered upon the suit properties, but on perusal of said mutation entry, it reveals that the same is not yet confirmed by the concerned circle officer. Though, a copy of certificate issued by Talathi regarding cultivation of crop is filed by the plaintiff, the same cannot be treated as a sufficient proof to say that the plaintiff is in possession of the suit property. Because in a said certificate, there is an entry regarding cultivation of crop by the plaintiff for the period of one year only."

Recording that when ever possession of the property is delivered to the other party by executing a document, then the said document must be registered compulsorily and in absence thereof, its' contents cannot be accepted as a gospel truth, the Appellate Court recorded that

the plaintiff has failed to prima facie show his possession upon the suit property and no fault can be found in the order passed by the Trial Court below Exh.35, which is confirmed in appeal.

Since the reasonings recorded by the Court below are based on the facts involved and since the Court has recorded that prima facie case do not exceed in favour of the plaintiff, the injunction has been refused. I do not find any reason to interfere in the said concurrent findings, which in my considered opinion, is based on sound reasoning, revolving around the facts involved. However, interest of justice would be better served if the proceedings in RCS No.185/2015 are culminated in a time bound fashion.

4. In the said circumstances, the learned Civil Judge, J.D.Karjat is directed to conclude the proceedings in RCS No.185/2015 within a period of 6 (six) months from today since it is informed by the respective learned counsels that the suit is presently posted for plaintiff's evidence.

In the wake of the aforesaid directions, without showing any indulgence in the impugned order, the writ petition is disposed off.

(BHARATI H. DANGRE, J.)