

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 283 OF 2020**

KALIDAS DURYODHAN KADAM & ORS. Petitioners.

V/s

AKASH BALU KADAM

.... Respondent.

Dr. Abhinav Chandrachud i/b Mr. Datta Mane for the Petitioners.

Mr. Satyajeet A. Rajeshirke for the Respondent.

CORAM: NITIN W. SAMBRE, J.

DATE: MARCH 10, 2022

P.C.:-

1] Impugned in the Petition is an order dated 16/04/2019 passed by the District Judge-10, Sangli in Misc. Civil Appeal No.64 of 2019 whereby the Petitioners are enjoined from carrying out construction and disturbing possession of the Respondent/Plaintiff over the suit property.

2] Respondent/Plaintiff initiated Regular Civil Suit No.36 of 2019 against the Petitioners claiming that suit property was purchased by him on 25/03/2015 for a consideration of Rs 2 lakhs. According to him, the Petitioners started construction on the aforesaid property over

which he has title and his request to stop construction was since not adhered to, he was prompted to file suit for withdrawal of the construction material by way of order of mandatory injunction, by way of injunction not to carry out construction and not to dispossess him from the suit property. It is also claimed that till decision of the suit, construction carried out be removed.

3] In the said suit for permanent and perpetual injunction, a prayer is made vide Exhibit-5, seeking temporary injunction restraining the Petitioners/Defendants from carrying out construction activity over 25 feet X 30 feet of area situated in 4 annas share of Gat No.299 at Mouje Pimpri, Taluka – Atpadi i.e. in suit property. The said prayer is rejected by the Trial Court vide order dated 8/3/2019. Respondent/Plaintiff, feeling aggrieved, preferred an appeal under Order 43 of the Code of Civil Procedure being Misc. Civil Appeal No.64 of 2019 which came to be allowed vide impugned order dated 16/04/2019 passed by District Judge-10 Sangli. As such, this Petition.

4] Dr. Chandrachud, learned Counsel for the Petitioners would urge that the Petitioners have initiated Regular Civil Suit No.159 of 2018 on

the file of Civil Judge, Senior Division, Atpadi for partition, separate possession, cancellation of sale deed and injunction.

5] According to him, property mentioned in the order impugned and the sale deed is also a subject matter of challenge in the said suit. He would invite attention of this Court to the consent letter issued by Duryodhan in favour of the Plaintiff to the said suit i.e. Kalidas who is Petitioner No.1, thereby permitting use of the suit property since 28/4/2004. In addition, his contentions are, in response to the aforesaid suit for partition, Respondent/Plaintiff has filed his Written Statement, alleging that the Plaintiff to this suit is son of Defendant No.30 in the said suit. According to him, it is claimed that there was oral partition of the suit property which was acted upon only for the purpose of effecting revenue entries. He would further claim that Sale Deed dated 25/3/2015 which is questioned in the suit for partition was claimed to have been executed based on nominal payment of consideration. That being so, he would claim that the transfer of the suit property in favour of the Plaintiff for nominal consideration is not lawful transfer and as such Sale Deed itself is void.

6] His further contentions are, the suit simpliciter for injunction based on title is not maintainable as very title of the Respondent/Plaintiff is under cloud as same is disputed by the Petitioners. Drawing support from the judgment of the Apex Court in the matter of *Anathula Sudhakar vs. P. Buchi Reddy (Dead) by LRs and others* reported in (2008) 4 SCC 594, particularly para 13.3, he claims that the suit simpliciter for injunction in case of dispute of title is not maintainable as there has to be declaration of title claimed. As such, he would urge that the order impugned is not sustainable and that being so, the order impugned is liable to be quashed and set aside.

7] Mr. Rajeshirke, learned Counsel for the Respondent/Plaintiff would urge that it is the specific case of the Respondent/Plaintiff that partition is effected *inter se* between the parties from common ancestor viz Duryodhan by executing Sale Deed for nominal consideration. According to him, since Sale Deed for nominal consideration remained to be executed in favour of the Plaintiff by the common ancestor Duryodhan, Sale Deed in question came to be executed in his favour. He would claim that since the suit is based on title, the suit for simpliciter injunction is very much maintainable. In

addition, his contentions are, the claim put-forth by the Petitioners/Defendants of permissive use of the suit property vide consent letter dated 28/4/2004 has no recognition in the eyes of law, particularly under the Evidence Act. According to him, registered Sale Deed in his favour has absolute evidentiary value as same is for valid consideration and that being so, court below was justified in granting injunction. So as to substantiate his claim that in favour of all coparceners partition was effected by executing Sale Deed in the past, that too by nominal consideration, could be inferred from the pleadings in the Written Statement.

8] I have considered rival submissions.

9] Trial Court while rejecting prayer for grant of injunction has considered that the Petitioners have come out with contradictory plea in the plaint of R.C.S. No.36 of 2019 and Written Statement in Regular Civil Suit No.159 of 2018 which is for partition and possession. The Court then considered that since the Plaintiff/Respondent has come out with contradictory pleadings, he is not entitled for injunction. The lower Appellate Court while reversing

the said finding has considered available evidence on record in detail and upon scrutiny of the same has noticed that there is prima facie case in favour of the Plaintiff so also balance of convenience and likelihood of suffering of irreparable loss if temporary injunction is not granted and as such has proceeded to grant temporary injunction, thereby restraining the Petitioners from carrying out construction on the suit premises mentioned in para 1(b) of the Plaint.

10] The fact remains that Plaintiff/Respondent claimed to have title over the suit property by virtue of registered Sale Deed executed by Duryodhan in his favour on 25/3/2015 i.e. father of Petitioner No.1 in respect of the property being Gat No.299 and 303. Vide said Sale Deed for consideration of Rs 2 lakhs, land to the extent of 4 annas share out of Gat No.299 total area 75R (0.02 pot kharaba) with specific boundaries was conveyed in favour of the Plaintiff. The challenge in the suit preferred by the Petitioner is to the Sale Deed dated 25/6/2015 executed by father of present Petitioner No.1 Duryodhan in favour of the Plaintiff in relation to land Gat Nos.303 and 299 to the extent of share transferred by virtue of Sale Deed and there is incorrect mention of the date to be 25/06/2015 whereas same is

25/3/2015. Apart from above, what is required to be noted is, the suit property described in plaint is land admeasuring 25 feet X 30 feet out of land Gat No.299 which is surrounded by the land which is conveyed to the Plaintiff by Duryodhan vide aforesaid Sale Deed. As such, it appears that Plaintiff has perfected his title and possession by virtue of aforesaid registered document. The Petitioners claim that they have permissive possession over the suit property by virtue of consent letter dated 28/4/2004 executed by Duryodhan in their favour. There is no affidavit given by Duryodhan in favour of the Petitioners to support the said unregistered consent letter permitting use of the suit property. The said document has hardly any evidentiary value to infer settled possession of the Petitioners over the suit property. Rather Plaintiff/Respondent's lawful possession could be inferred from the title conveyed to him vide registered Sale Deed dated 25/3/2015.

11] In the aforesaid backdrop, if we appreciate the contradictory stand as has been alleged against the Respondent/Plaintiff in partition suit and present suit, fact remains that such contradictory stand is specifically explained by him while amending the suit which fact is duly appreciated by the lower Appellate Court. Contention of the

counsel for the Petitioners that Sale Deed is executed for nominal consideration as has been claimed in the recitals from the Sale Deed can be looked into at appropriate stage of the proceedings so as to infer that such transaction is not lawful in the eyes of law and can be termed as void. However, as on date, there exists valid title which is not disturbed by any judicial pronouncement and that being so, claim of the Petitioners that registered Sale Deed will not vest any title in Respondent/Plaintiff will be hardly of any consequence at this stage. Support drawn from the judgment of the Apex Court in the matter of *John Tinson & Co. Pvt. Ltd and Others vs. Surjeet Malhan (Mrs) and another* reported in (1997) 9 SCC 651, particularly para 6 will be of hardly any consequence at this stage of the proceedings, particularly when the Court is required to prima facie appreciate the issue of settled lawful possession. Apart from above, it is claimed that since the Petitioners have questioned the title of the Respondent/Plaintiff over the suit property in the pending partition suit so also has denied his title in the present suit by way of Written Statement, same is under cloud. Fact remains that Plaintiff/Respondent appears to be in lawful peaceful possession of the suit property by virtue of registered Sale Deed in his favour. Such possession is interfered and threatened by

the present Petitioners/Defendants and as such Respondent/Plaintiff's suit for simpliciter injunction is very much maintainable. Support can be drawn from the observations in para 13.1 of the judgment of the Apex Court in the matter of *Anathula Sudhakar*, cited supra, which read as under:-

“13.1 Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the right owner.”

12] In the aforesaid backdrop, I hardly see any reason which warrants any interference in the extraordinary jurisdiction. That being so, Petition fails and same stands dismissed.

(NITIN W. SAMBRE, J.)