

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7045 OF 2019

Jagannath Tukaram Bodare and Ors.

..Petitioners

Versus

Hanmant Baburao Sabale and Ors.

..Respondents

Mr. Nikhil Wadikar a/w Komal Bhoir i/by Nandu V. Pawar, for the
Petitioners.

Mr. Abhijeet A. Kulkarni a/w Sachin K. Hande i/by DD & Abhijit
Associates, for the Respondent No.1.

CORAM : NITIN W. SAMBRE, J.

DATE : 28th FEBRUARY, 2022

PC.

1. The respondents/plaintiffs initiated Regular Civil Suit No.445 of 2015 for declaration and permanent injunction in relation to the subject matter which claimed to have been fraudulently vested in the present petitioners. The respondents/plaintiffs sought declaration that the sale-deed executed in favour of present defendant No.3 on 9th May, 2003 be set aside. Admittedly, in the said suit, prayer for temporary injunction is granted. In addition to the aforesaid suit, the respondents/plaintiffs initiated suit being RCS No.204 of 2016 seeking injunction restraining present petitioners from interfering over the suit property and also temporary injunction not to create third party interest in the suit property.

2. Both the Courts below have concurrently held that the petitioners/defendants shall not disturb possession of the plaintiffs over the suit property and also restrained the petitioners from creating third party interest vide impugned order passed below Exh.5 on 8th November, 2017 confirmed in appeal being Misc. Civil Appeal No.1 of 2018 on 8th March, 2019.

3. Submissions of learned counsel for the petitioners are, both the Courts below have failed to appreciate the existence of registered title-deed in favour of the petitioners and consequential mutation entries in their favour. According to him, since the earlier suit being RCS No.445 of 2015 is pending adjudication in relation to title-deed and the fact about the very sale-deed and possession of the petitioners over the property was within the knowledge of the respondents/plaintiffs, the Court below committed an error in passing order impugned.

4. While countering the said submissions, counsel for the respondents/plaintiffs would urge that already suit for partition being Suit No.266 of 1981 which was decreed in 1996 is pending execution. According to him, right, if any in favour of the petitioners/defendants can be canvassed in the said execution proceedings. He would claim that the respondents/plaintiffs have established *prima facie* case of fraudulent execution of the sale-deeds and that being so, both the Courts below are justified in granting temporary injunction. He would further claim that the

petitioners sale-deed does not specify the share based on the boundaries which they have purchased, as the property which was conveyed is too vague to infer description in the sale-deed. A further contention is, the petitioners being purchasers of undivided share from the coparcener cannot ask possession of share which they have purchased. He has drawn support from the judgment of the Hon'ble Apex Court in the matter of ***Hardeo Rai Vs. Sakuntaladevi and Ors.*** reported in ***(2008) 7 SCC 46.***

5. I have considered aforesaid submissions.

6. The fact remains that the suit is not initiated by the petitioners but it is by the respondents. At the behest of the respondents, three proceedings are pending for consideration before the Civil Court:- a) the execution of the partition decree b) suit of 2015 referred above i.e. RCS No.445 of 2015 in which respondents have challenged the sale-deed executed in favour of the present defendant No.3/petitioner. The fact remains, in the said suit, respondents/plaintiffs have specifically come out with the case of purchase of two properties by the defendant No.3 which are mentioned in the description of suit property therein.

7. In the aforesaid background, though the present relief could have been claimed by the plaintiffs against defendant No.3 in the said suit of 2015, bypassing the same, respondents/plaintiffs have initiated suit in 2016 being RCS No.204 of 2016 seeking relief

of temporary injunction.

8. The fact about existence of sale-deed was well within knowledge of the respondents/plaintiffs as is apparent from the pleadings in RCS No.445 of 2015 so also the description of the property therein.

9. This Court is equally required to be sensitive to the fact that sale-deed is executed in favour of defendant No.3, which has resulted into mutating his name on revenue record. In view of the revenue entries in favour of the petitioners, the principle of title follows the possession is required to be appreciated. In view of the evidence of vesting of title in favour of the petitioners, which is subject matter of challenge in 2015 suit in which no temporary injunction is sought, existence of mutation entry in favour of the petitioners, the Courts below committed an error in granting blanket temporary injunction in favour of the respondents/plaintiffs whose predecessor in title has allegedly executed registered sale-deed in favour of the petitioners.

10. As a consequence of above, both the the orders granting injunction to the extent that petitioners are restrained from creating third party right in relation to the suit property are justified. However, the order to the extent of granting injunction in regard to the possession is hereby quashed and set aside.

11. It shall be open for the petitioners to participate and establish their claim in regard to the possession over the suit property in the pending executing proceedings and the partition decree in terms of Section 22 of the Specific Relief Act. The petition as such is partly allowed.

12. The fact remains that the judgment which is sought to be relied on in the matter of *Hardeo Rai Vs. Sakuntala Devi and Anr.* reported in *(2008) 7 SCC 46* delivered by the Hon'ble Apex Court will be of hardly any assistance, as it is claim of the petitioners that they are claiming possession over the suit property. Rather their such claim that they are in settled possession by virtue of registered sale-deed since last more than 30 years can be inferred from mutation entry and recitals in sale-deed.

13. The suit be decided on its own merits and in accordance with law.

[NITIN W. SAMBRE, J.]