

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

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WRIT PETITION NO.5654 OF 2022

Madhukar Tukaram Jadhav

.. Petitioner

Versus

Ramdas Sadashiv Kale & Ors.

.. Respondents

Mr.Rahul S. Kate for the petitioner.

CORAM : ROHIT B. DEO, J.

DATED : 6th JUNE 2022

P.C.:-

. The petitioner is the original plaintiff, who has instituted Regular Civil Suit 1479 of 2012, seeking decree of specific performance of agreement dated 22.3.1996.

2. The suit agreement is executed by Shri Sadashiv Kale, who is the father of defendants 1 and 3 to 10 and husband of defendant 2. In so far as the sanctity of the said agreement is concerned, the legal heirs of Shri Sadashiv Kale have a counter narrative.

3. It would not be necessary to note in detail their version. However, one of the contentions of the defendants was and is that the suit property was always ancestral property and Shri Sadashiv Kale did not, in any event, have right to alienate the said property in entirety.

4. Be that as it may, the plaintiff applied for injunctive relief. The plaintiff sought twin reliefs. First relief is granted and the learned trial Judge has enjoined the defendants from creating third party interest in the property. However, the other relief, which seeks to restrain the defendants from disturbing the purported possession of the plaintiff is rejected by the trial Court and the appeal preferred by the plaintiff is also dismissed.

5. I have given due consideration to the concurrent findings recorded by the learned trial Judge and that in appeal, which is that the plaintiff is *prima facie* not in possession of the property. The Courts below have *inter alia* noted that after the death of Shri Sadashiv Kale in the year 2008, the defendants mutated their names in the revenue record, and yet, the plaintiff took no steps to assert the claim on the basis of the agreement and filed the suit only in the year 2014.

6. While the Courts below have noted the submission of the plaintiff that there is a reference to handing over possession in the agreement dated 22.3.1996, the Courts below have observed that since very execution of agreement is in dispute, such recital *ipso facto* may not be decisive.

7. While the learned counsel for the plaintiff would submit that the concurrent findings are not consistent with the material on record, I am not inclined to agree with such submission. The learned counsel for the plaintiff would submit that such documents were placed on record. In paragraph 21 of the judgment of the Appellate Court, the observation is that no document was placed on record in the Trial Court to suggest any development carried out by the plaintiff on the subject land, and that it was only eight years after filing of the appeal that certain documents are placed on record before the Appellate Court. The Appellate Court then notes that the names of the defendants are duly recorded in the 7/12 extracts after the death of Shri Sadashiv Kale in the year 2008 and the defendants are shown in possession.

8. In exercise of writ and supervisory jurisdiction, it would not be permissible to interfere with the pure findings of fact much less findings which are concurrent.

9. Petition is dismissed.

ROHIT B. DEO, J.