

BGP

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

WRIT PETITION NO.9294 OF 2017

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Shri Rasiklal Nemichand Sarnot

..Petitioner

V/s

Shri Ramesh Narayan Patel & Ors.

..Respondents

Mr. Sanjay Kshirsagar, for the Petitioner.

Mr. Vijay D. Patil a/w Yogesh Patil i/by Nikhil Chavan, for the Respondent No.1.

CORAM: NITIN W. SAMBRE, J.

DATE: AUGUST 19, 2022

P.C.

1. This petition is by the defendant to a suit for eviction being Civil Suit No.90 of 2009 decreed by the Small Causes Court, Pune, vide judgment and order dated 30th June, 2014 confirmed in an appeal in Civil Appeal No. 13 of 2015.

2. The suit property, a flat claimed to have been assigned in favour of the respondents vide registered Deed of Assignment dated 1st July, 2008. Pursuant to the request of the petitioner/defendant, he was permitted to occupy the said premises (suit flat) as a gratuitous tenant.

3. Since the suit premises were not vacated, the suit for possession, mesne profit and perpetual injunction came to be initiated.

4. On 30th June, 2014, the suit came to be decreed with directions to the petitioner/defendant to hand over possession of the suit property described in paragraph 1 of the plaint. Enquiry pursuant to provisions of Order XX Rule 12 of CPC for mesne profit came to be ordered. An injunction is ordered against the petitioner from creating third party interest in the suit property.

5. In appeal the aforesaid judgment was confirmed. Mr. Sanjay Kshirsagar, counsel appearing for the petitioner would strenuously urge that the suit is based on the Deed of Assignment dated 1st July, 2008, which was duly cancelled by issuing notice. According to him, the petitioner/defendant by misrepresentation was made to sign the aforesaid Deed of Assignment. He would claim that the consideration which was deposited in the account of the petitioner was duly returned. Based on the above, he claimed that the Deed of Assignment was cancelled. As such, the respondents ceased to have any title over the suit property. In addition, his contentions are, the maintainability of the suit pursuant to the provisions of Section 23 of the Provincial Small Cause Courts Act was contested. As such, the plaint ought to have been ordered to be returned, as there exists serious dispute as regards title of the respondents/plaintiffs.

6. Drawing support of the judgment of the Apex Court in the matter of *Budhu Mal V/s Mahabir Prasad & Ors.* reported in *(1988) 4 SCC Page 194*, he would urge that the plaint ought to have been returned in view of the serious issue of lack of jurisdiction. Apart from

the above, the counsel would urge that the suit was decided in hasty manner, as after the no-cross order was passed, within three weeks the judgment was delivered by the Trial Court.

7. Mr. Vijay Patil, counsel appearing for the respondents/plaintiffs would support the order impugned. By inviting attention of this Court to the observations made by the Trial Court and the Appellate Court, he would urge that the jurisdiction of the Provincial Small Cause Courts is exercised having regard to the factual matrix and the evidence on record and that being so, the court should be slow in causing interference in extraordinary jurisdiction.

8. I have appreciated the aforesaid submissions.

9. The Deed of Assignment is based on Visar Pavti executed on 25th November 2006.

10. The Deed of Assignment allegedly executed by the petitioner dated 1st July, 2008 is registered document and same in categorical terms deals with the payments which were received by the petitioner from the respondents. Though the original of the said Deed of Assignment was not available, the certified copy of the same was produced on record. Evidence with the permission of the Court in support of Deed of Assignment was duly adduced. Apart from above, so as to substantiate the claim, the respondents/plaintiffs have examined in all four witnesses and also relied on documentary evidence.

11. The fact remains that, the petitioner/defendant has failed to cross-examine the witnesses of the plaintiffs. As such, the entire testimony of the respondents/plaintiffs has gone unchallenged.

12. Apart from above, the petitioner/defendant has failed to adduce any evidence in the matter. The petitioner has not questioned the legality of the Deed of Assignment in an independent proceeding. Merely because the petitioner has issued a notice thereby intimating the respondents of cancellation of Deed of assignment dated 1st July, 2008 that by itself will not confer any right on the petitioner to claim that the interest in the suit property is not assigned to respondents/plaintiffs particularly in the light of registered assignment deed dated 1st July, 2008.

13. Though support is drawn from the provisions of Section 23 of the Provincial Small Cause Courts Act based on the judgment of the Apex Court in the matter of *Budhu Mal (cited supra)*, it is noted that the said provision does not appear to be mandatory in nature. Rather the said case supports the issue canvassed in favour of the respondents. Discretion is given to the Small Causes Court in the facts and circumstances of the case whether to return the plaint or to entertain the claim for eviction. The such discretion is required to be exercised by the Small Causes Court based on the facts and circumstances of each case.

14. In the facts of the present case, if we appreciate the above contention of Mr. Sanjay Kshirsagar, what can be noticed is,

assignment in favour of the respondents by the petitioner is based on having received consideration. The said document is duly registered. The petitioner has not taken pains to question the said document before any of the appropriate forum. In the aforesaid background, in my opinion, the Small Causes Court was justified in exercising jurisdiction in spite of the fact that the petitioner has come out with a case that the plaint is liable to be returned, as the title in relation to suit property is not vested in the respondents/plaintiffs.

15. Apart from above, what can be noticed is, it was for the petitioner to prove that the Deed of Assignment was got executed by coercion, misrepresentation, and without paying valid consideration. Leave apart cross-examination of the witnesses of the plaintiffs, the petitioner/defendant has failed to adduce any evidence. As a sequel of above, the evidence of the respondents/plaintiffs went unchallenged, whereas the petitioner has failed to establish his defence as that of the fraudulent execution of the Deed of Assignment.

16. Throughout conduct of the petitioner during the pendency of the suit, if appreciated, particularly, delayed filing of the written statement, the non cross-examination of the plaintiffs' witnesses, the setting aside of the order of no-cross subject to payment of cost, the non-payment of cost by the petitioner and in spite of repeated chances being given, failure to adduce evidence by the petitioner/defendant rightly prompted the Appellate Court, so also the Trial Court to pass a decree.

17. In the aforesaid background, no error of jurisdiction or law could be noticed, which warrants interference in extraordinary jurisdiction.

18. The petition as such fails, dismissed.

19. Mr. Vijay Patil, Counsel for the Respondents assures that for a period of six weeks from today possession warrant shall not be executed subject to condition that petitioner shall not create any third party interest and maintain the property and shall not do any such act which may affect the property or induct any third party in the suit property.

(NITIN W. SAMBRE, J.)