

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2064 OF 2022

Shri. Gamnaram Thanaji Choudhary ..Petitioner

Versus

Shri. Shantaram Vasantrao Tapkir ..Respondent

Mr. Drupad S. Patil, for the Petitioner.

CORAM : NITIN W. SAMBRE, J.

DATE : 22nd APRIL, 2022

PC.

1. Heard Mr. Drupad Patil, learned counsel for the petitioner/defendant.

2. The respondent initiated Regular Civil Suit No.1074 of 2019 based on sale-deed dated 17th February, 2009 for declaration and injunction. Application Exh.5 for grant of temporary injunction came to be allowed vide impugned order dated 23rd July, 2019, whereby petitioner/defendant is restrained from carrying out construction and was also directed to maintain *status-quo* till the disposal of the suit. The order was confirmed in an appeal which was preferred at the behest of the petitioner vide order dated 19th March, 2021. As such, this petition.

3. Contentions of Mr. Drupad Patil, learned counsel for the

petitioner are, Correction-Deed was executed vide Exh.25 on 31st March, 2011 thereby correcting boundaries mentioned in sale-deed of the predecessor-in-title of the petitioner. According to him, said Correction-Deed is not questioned in the suit. According to him, such corrected boundaries are reflected in the sale-deed of the petitioner. That being so, both the Courts below committed an error in discarding said fact. He would further claim that equities can be worked out in favour of the petitioner as construction of the petitioner is completed upto slab of first floor. He is willing to furnish an undertaking to the court below provided he be permitted to complete the said construction and occupy the premises subject to petitioner not claiming equities in the matter.

4. I have appreciated the said submissions.

5. Original owner Vithal Tapkir through his son and Power of Attorney holder, Surendra Tapkir executed registered sale-deed in favour of the plaintiff/respondent on 17th February, 2009. In the said sale-deed, property of the respondent/plaintiff is shown to be located on Southern side of Dehu – Alandi Road. In the sale-deed dated 31.03.2011 executed in favour of predecessor-in-title of the petitioner/defendant, Allauddin Qureshi the property was shown to be situated on the Northern side of the said road. Vide Exh.25, based on the Power of Attorney correction was carried out in the boundaries of the suit property. As such, it is claimed that location therein is further clarified to mean by said Allauddin that on the

Southern side of the property of the predecessor-in-title of the petitioner, there exist Dehu – Alandi road and earmarked part of land Survey No.116/3.

6. Mr. Drupad Patil, learned counsel though has invited my attention to the measurement map drawn on 23rd March, 2018 thereby identifying the suit property, this Court is required to be sensitive to the fact that the aforesaid demarcation was carried out based on correction of boundaries by unilaterally executing the Correction-Deed, viz. the deed of Power of Attorney was for execution of the sale-deed. The recitals therein are not brought to the notice of this Court to infer that power was also conferred for execution-deed of correction.

7. Both the Courts below while appreciating the aforesaid piece of evidence were justified in observing that there exist serious dispute about the location of the property of the petitioner, as same can't be identified from the evidence on record. Rather both the Courts below based on the sale-deed dated 17th February, 2009 in favour of the respondent/plaintiff were justified in inferring that the plaintiff has demonstrated strong *prima-facie* case, balance of convenience and likely to cause irreparable loss. The predecessor-in-title of the petitioner was justified in getting the Correction-Deed Exh.25 executed on 31st March, 2011 based on Power of Attorney is required to be proved by the petitioner. However, if one goes by the record which is available with the suit proceedings, in my opinion,

both the Courts were justified in granting injunction against the petitioner. That being so, no case for interference in the orders impugned is made out.

8. The petitioner has also failed to produce the sanctioned map from the planning authority of the structure of which he has undertaken construction. As such, *prima-facie*, it can be inferred that the construction carried out by the petitioner is without any certification from the planning authority.

9. The petition as such fails, dismissed.

10. However, this will not preclude the petitioner from approaching before the Court below for weighing equities in his favour.

[NITIN W. SAMBRE, J.]