

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

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**WRIT PETITION NO.8446 OF 2017
WITH
WRIT PETITION NO.8448 OF 2017
WITH
WRIT PETITION NO.6377 OF 2018**

Shri. Bhagwat Pundlik Mandale and Ors. ..Petitioners

Versus

Shri. Jagannath Chabu Kandalkar and Ors. ..Respondents

Mr. Shivaji A. Masal, for the Petitioners.

Mr. Sachin Gite, for the Respondents.

CORAM : NITIN W. SAMBRE, J.

DATE : 15th MARCH, 2022

PC.

1. Respondent No.1 - Shri. Jagannath Chabu Kandalkar instituted RCS No.44 of 2013 on the file of Civil Judge Judge Division, Chandwad, District Nashik for declaration and injunction. Claim in the suit is sale-deed executed in favour of predecessor of the defendants/ petitioners namely, Gopal Mandale on 21st April, 1970 was of repurchase by reversing the said transaction based on recitals in sale-deed dated 7th May, 1991, same was executed by Shevantabai Mandale by virtue of which respondents/plaintiffs to the said suit have become owner and the petitioners be restrained from interfering with possession over the said property. Prayer for grant of temporary injunction came to be moved. The Court below

vide order dated 30th September, 2014 rejected the prayer which was reversed by the Appellate Court in MCA No.118 of 2013, whereby the petitioners are restrained from creating third party interest in the suit property till the disposal of the suit.

2. In so far as Writ Petition No.8448 of 2021 is concerned, impugned in the petition is an order dated 27th March, 2017 passed by District Judge-1, Niphad, whereby civil appeal preferred by the petitioners against the order of the Trial Court passed in RCS No.106 of 2014, thereby praying temporary injunction below Exh.5 came to be confirmed. The appeal being MCA No.117 of 2014 is initiated by the present petitioners based on their title and mutation entry for simplicitor injunction against the respondents herein claiming order of restraining the respondents from interfering with the possession of the petitioners over the suit property.

3. As far as Writ Petition No.6377 of 2018 is concerned, challenge is to order dated 21st February, 2018 passed by the Court below of Civil Judge Junior Division, Chandwad, District Nashik in RCS No.106 of 2014, whereby application Exh.20 preferred in the said suit came to be allowed and the proceeding in RCS No.106 of 2014 is stayed till final disposal of RCS No.44 of 2013 as referred to above.

4. The factual matrix which gave rise preferring both the aforesaid suits are, petitioners' ancestor Gopal Mandale who died on

19th May, 1990 claimed to have purchased suit property to the extent of 3 Acre/3 Hectare vide conditional sale-deed dated 21st April, 1970. After the death of Gopal Mandale, petitioners claimed to be legal heirs and such mutation entry was effected in their favour vide Mutation Entry No.324 of 1990 on 6th September, 1990 which is not questioned till date by the respondents.

5. It appears that the present respondents got executed sale-deed on 7th May, 1991 from Shevantabai Mandale widow of deceased Gopal Mandale, irrespective of the fact that the properties mutated in the name of petitioners being legal representatives of Gopal Mandale along with Shevantabai Mandale.

6. In the aforesaid background, rival parties to the petitions have preferred respective suits as referred above.

7. As far as the title to the suit property is concerned, contention of the petitioners that Gopal Mandale has title to the extent of 3 Acre/3 Hectare, whereas respondents claimed by virtue of sale-deed dated 21st April, 1970, the title of conditional sale-deed was transferred to the extent of 3 Acres only.

8. Of course, the said issue can be decided after appreciating pleadings of the rival parties and the evidence brought on record. However, the claim that the Court below has granted injunction not to create third party interest is required appreciated

and does not call for interference for the following reasons.

9. The fact remains that after the death of Gopal Mandale, mutation entry was effected in the name of petitioners on 6th September, 1990 and the status of the petitioners as legal heirs of Gopal Mandale is not in dispute till this date. In spite of the above, subsequent to the mutation entry on 6th September, 1990, the respondents who are plaintiffs in RCS No.44 of 2013 got executed sale-deed from Shevantabai Mandale who was one of the legal heir of Gopal Mandale. In this background, it cannot be said that Shevantabai Mandale from whom the sale-deed was got executed in favour of the respondents had clear and absolute title being the surviving widow of deceased Gopal Mandale. Rather along with Shevantabai Mandale other legal heirs also became co-owner of the suit property. That being so, the very title claimed by the respondents in RCS No.44 of 2013 by virtue of sale-deed dated 7th May, 1991 is under cloud. As such, at this stage, it can be inferred that the respondents to these petitions have no clear title to the suit property and as such, they also ought to have been restrained by the Court below from creating third party interest in relation to the suit property.

10. In this background the respondents who are plaintiffs in RCS No.44 of 2013 are also required to be injuncted from creating third party interest in relation to the suit property.

11. As such, Writ Petition No.8446 of 2017 stands allowed to the aforesaid extent. Respondents to the petition are restrained from creating third party interest till the disposal of the suit.

12. As far as the Writ Petition No.8448 of 2017 is concerned, in the wake of finding recorded above, I hardly see any reason which warrants interference in the order impugned granting injunction against the petitioners restraining them from creating third party interest. As such, same is dismissed.

13. As far as Writ Petition No.6377 of 2018 is concerned, order impugned is passed in exercise of powers under Section 10 of the CPC whereby the later suit instituted by the petitioners being RCS No.106 of 2014 is stayed till the final disposal of RCS No.44 of 2013.

14. Needless to observe that both these suits are pending before the Civil Judge Junior Division, Chandwad, District Nashik and parties to the said suits are common, the Court below is directed to club and hear both the aforesaid suits i.e. RCS No.106 of 2014 and RCS No.44 of 2013 together.

15. In the aforesaid background, the order impugned passed below Exh.20 dated 21st February, 2018 stands modified as under :-

- a) It is directed that RCS No.106 of 2014 be clubbed and

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heard together with RCS No.44 of 2013 and same be decided by Civil Judge Junior Division, Chandwad, District Nashik or other Court to whom the said matter shall be assigned by the learned District Judge, Nashik.

16. All these petitions stand disposed of in above terms.

[NITIN W. SAMBRE, J.]