

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

WRIT PETITION NO.10483 OF 2019

Bhiku Vithoba Kadam and Anr.

..Petitioners

Versus

Mahadeo Tukaram Jadhav and Ors.

..Respondents

Mr. Dilip Bodake a/w Sharad T. Bhosale, for the Petitioners.

Mr. Hrishikesh Barge, for the Respondents.

CORAM : NITIN W. SAMBRE, J.

DATE : 29th MARCH, 2022

PC.

1. This petition is by the defendant Nos.1 and 2 to Regular Civil Suit No.104 of 2016 pending on the file of Civil Judge, Junior Division, Koregaon.

2. It is the contention of the respondent/plaintiff in the suit that he is in settled possession of the suit property by virtue of registered lease-deed of 1997 which was for a period of ten years and subsequent mortgage-deed dated 8th January, 2001 which was valid for a period of twenty five years. It is also claimed that the defendant No.1 executed an agreement of sale in favour of respondent/plaintiff.

3. Since the defendant No.1 ignoring the claim of plaintiff executed a sale-deed dated 17th December, 2015 in favour of

defendant No.2, the respondent/ plaintiff was prompted to initiate aforesaid suit for specific performance setting aside sale-deed dated 17th December, 2015 and injunction not to disturb the possession.

4. In said suit, prayer for temporary injunction came to be moved, which was rejected by the learned Trial Court vide its order dated 9th November, 2016.

5. Feeling aggrieved, respondent/plaintiff took out Misc. Civil Appeal No.177 of 2016, which came to be allowed vide impugned order dated 20th February, 2019. The consequences of impugned order, the petitioners /defendant Nos.1 and 2 are restrained from obstructing the respondent's/plaintiff's possession over the suit property.

6. While questioning the order impugned, Mr. Dilip Bodake, learned counsel for the petitioners/defendant Nos.1 and 2 would invite attention of this Court to the recitals of the sale-deed dated 17th December, 2015, wherein petitioner/defendant No.2 claimed to have received possession from defendant No.1 for a valid consideration. The affidavits of the adjoining land owners, 7/12 extract for the years 2016-17 in favour of the petitioner/defendant No.2, the registration of sugarcane supplier of Jarandeshwar Sugar Mills, receipt of the amount of sugarcane after its harvesting from the said mill and that there was no injunction in operation for a period of more than five years in the pending civil suit.

7. As it is claimed by Mr. Dilip Bodake, learned counsel for the petitioners that the petitioners having perfected their title by virtue of sale-deed dated 17th December, 2015, cannot be restrained from enjoying possession over the suit property. He would urge that the aforesaid document as in categorical term establishes the settled possession of the petitioners over the suit property.

8. Learned counsel then would urge that the appellate court has failed to consider the aforesaid important piece of evidence and without there being absence of revenue record in favour of the respondent/plaintiff has proceeded to grant temporary injunction. As such, according to him, the order impugned warrants interference.

9. Counsel for the respondent/plaintiff would support the order impugned. According to him, the initial documents of lease for a period of ten years and subsequent mortgage-deed for a period of twenty five years are the registered documents. He would further claimed that under the provisions of Maharashtra Land Revenue Code, revenue entries are taken into account by the revenue authorities and not by respondent/plaintiff.

10. His star contention is that defendant No.1 at no point of time bothered to resist claim of the respondent/plaintiff and only after thought presented present petition. As such, he has sought dismissal of the petition.

11. Considered rival submissions.

12. After the defendant No.1 who allegedly executed registered lease-deed in favour of the plaintiff was served, he has chosen not to appear or contest claim of plaintiff for grant of temporary injunction by filing reply to the application Exh.5 on merit or written statement. As such, to the extent of defendant No.1 the Court below was justified in recording a finding that defendant No.1 has not resisted the claim of the plaintiff as is canvassed in the suit.

13. I am informed by Mr. Dilip Bodake that even though at belated stage defendant No.1 has placed on record written statement which is duly accepted by the Trial Court and the defendant No.1 has supported the claim of the defendant No.2. He has also claimed that the defence set up is that of execution of sham and bogus document.

14. As far as the aforesaid contentions are concerned, it is for the defendants to establish that registered document is sham and bogus one and the burden to that effect is on the petitioners/defendants.

15. This Court is required to be conscious to the fact that both the parties i.e. defendant Nos.2 and the plaintiff have respectively produced affidavits of adjoining property owners

claiming that they are in settled possession of the suit property. As there are affidavits against affidavits on record whereby stating that rival parties are in settled possession, said evidence is required to be ignored.

16. In the aforesaid background, what can be noticed is that since the defendant No.1 at the relevant time has not contested the claim of the respondent/plaintiff, defendant No.2 cannot claim better title than the defendant No.1 as he has stepped into shoes of the defendant No.1. In the aforesaid background, the appellate court was justified in granting temporary injunction in favour of respondent/plaintiff.

17. Though Mr. Dilip Bodake has claimed that the relief by way of temporary injunction was sought by defendant No.2 and as such defendant No.1 has not contested the claim, the fact remains that the defendant No.1 was put to notice and has chosen not to object the prayer for grant of injunction till the date of filing of present writ petition. The fact remains that the defendant No.1 has not questioned the alleged registered mortgage-deed to be sham and bogus document. As such, said document governs relationship between the parties which are much prior to the date of execution of the sale-deed i.e. 17th December, 2015 by defendant No.1 in favour of defendant No.2.

18. As such, the aforesaid registered document rightly

prevailed before the Appellate Court in the matter of grant of temporary injunction.

19. As such, in my opinion, no case for interference in the extraordinary jurisdiction of this Court is made out. The petition as such fails, dismissed.

20. Interim order passed by this Court to continue a period of two weeks.

21. As regards disbursement of amount of sugarcane, there shall be *status-quo* for a period of two weeks.

[NITIN W. SAMBRE, J.]