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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 6192 OF 2021

SOU. SUVARNA ANANDRAO PAWAL AND ORS PETITIONERS

V/s.

SATISH SHANKARRAO VHATKAR AND ANR RESPONDENTS

WITH

CIVIL WRIT PETITION NO. 6187 OF 2021

**SMT. SUVARNA ANANDRAO PAWAL PETITIONERS
AND ORS**

V/S.

ANANDRAO PANDURANG PAWAL AND ANR ..RESPONDENTS

Mr. Sandeep S. Koregave Advocate for the Petitioner in WP 6192/2021
Mr. Abhishek R. Avachat Advocate for the Petitioner in WP 6187/2021
Mr. A. Y. Sakhare, Senior Advocate i/b Mr. Sudhir S. Sadavarte for
Respondent nos. 1 & 2 in both petitions

CORAM : NITIN W. SAMBRE, J.

DATE: APRIL 1, 2022.

P.C.:

- 1) Heard respective counsel.
- 2) Respondent Satish initiated R.C.S. No. 23/2018 on the file of

Civil Judge Senior Division, Kolhapur based on Agreement of Development dated 22/04/2015 executed by Defendant no. 1 and the rights accrued thereon. In the said Suit, Plaintiff-Satish moved Application for grant of temporary injunction which came to be allowed and confirmed in an Appeal preferred by the present Petitioners. As a consequence of impugned order, Petitioners are restrained from disturbing the possession of Plaintiff-Satish.

3) Having regard to the fact that the Development Agreement was executed by Defendant no. 1 Anandrao, Anandrao initiated R.C.S. No. 173/2021 questioning the legality of Development Agreement which is pending adjudication before the Court of Civil Judge Senior Division, Kolhapur. In R.C.S. No. 23/2018, Defendant nos. 2 to 7 are legal representatives of Anandrao.

4) Alleging that Suit property is ancestral belonging to HUF, it is claimed that Suit property is liable for partition and accordingly R.C.S. No. 151/2021 is initiated for partition, separate possession in which Agreement of Development dated 22/04/2015 is also questioned to the extent of its legality and validity. I am informed that present Petitioners took out Application for grant of temporary

injunction in the said Suit seeking injunction restraining Satish from disturbing their possession/alienating the Suit property which is rejected by both the Courts below. As such, Writ Petition No. 6187 of 2021.

5) While questioning the orders of refusal of injunction, counsel for the Petitioner Mr. Avachat and Mr. Koregave would urge that revenue record primarily depicts that Suit property is ancestral property. According to him, even if sisters of Anandrao have executed a Relinquishment Deed in favour of Anandrao, same cannot be considered to the detriment of the Petitioners who are legal representatives of Anandrao. According to him, Petitioners have equal right and share in the Suit property. That being so, Court below Committed an error in refusing the injunction. My attention is also invited to the fact that Developer Satish who is Plaintiff in the first Suit has claimed in F.I.R. that Petitioners are in possession of the Suit property. According to Mr. Koregave, the condition incorporated in the bail order is in wake of existing situation on that day as the Petitioners have to honour Courts orders. That being so, even if statement acting in compliance of order of temporary injunction is

made, legality of such order of temporary injunction is always subjected to test before this Court.

6) In the aforesaid background, the contentions are, once Suit property is destroyed by Developer Satish, they will be losing valuable rights in the Suit property. As such, it is claimed that Developer Satish be restrained from interfering with the possession of the Petitioner over the Suit property, developing the Suit property or from creating third party interest.

7) Mr. Sakhare, learned senior counsel for Respondent-Developer would support the order of injunction. According to him, Petitioner i.e. Anandrao, his wife Defendant no. 2 and his two sons who are Defendants are residing under one roof. He would claim that amount of consideration as reflected in Development Agreement was received in the account of Anandrao and as such, there is constructive knowledge about execution of Development Agreement in favour of Satish. He would further claim that apart from revenue entries in favour of Developer Satish, the fact remains that there is non agricultural permission granted in his favour and the Suit property was subjected to plotting. In categorical terms, a statement is made

on instructions from Plaintiff Satish, fifteen third party interests are created in the Suit property.

8) According to him, both these petitions are liable to be dismissed.

9) Considered rival submissions.

10) From the pleadings in the Plaint of R.C.S. No. 23/2018, it can be inferred that Suit property is joint family property which was acquired by Pandurang Paval to which Anandrao and his sisters succeeded. Plaintiff Satish has specifically come out with a case that Sisters of Anandrao have executed registered Relinquishment Deed in his favour as a consequence of which, Development Agreement was entered into by parting with part consideration. It appears from the record that said Development Agreement was acted upon by the Plaintiff by plotting the land by converting the same to NA use. Statement of the Petitioner Satish that fifteen sale deeds out of Suit property were executed is taken judicial note of.

11) Prima facie it can be inferred that execution of Development Agreement was well within the knowledge of the Petitioner as a consequence of which a notice was issued by Ashwini, d/o. Anandrao

sometime in November 2017 claiming that Suit property is ancestral property and each of the Defendants to the aforesaid Suit are having 1/5th share. Said notice though was replied by Plaintiff Satish, present Petitioners have chosen not to file Suit for considerable period about 4 years as the Petitioners have initiated Suit being R.C.S. No. 151/2021 for partition, possession and declaration about aforesaid Development Agreement after period of 4 years so also Anandrao Defendant no. 1 initiated after 6 years of execution of Development Agreement, Suit for declaration and injunction in relation to the same.

12) In the aforesaid background, it can be easily inferred that constructive knowledge about the Development Agreement executed on 22/05/2015 in favour of Plaintiff Satish by Ananandrao was within the knowledge of the Petitioners and for almost four years, Petitioners have not acted upon and taken any steps.

13) In the aforesaid background, Plaintiff Satish has got converted land to NA use and has created third party interest by executing fifteen registered sale deeds.

14) That being so, Court below in my opinion was justified in

refusing injunction in favour of the Petitioners thereby injuncting Plaintiff Satish from interfering with peaceful possession.

15) However, in the facts and circumstances of the case in hand and for the reasons stated herein above, in my opinion, following order shall sub-serve the interest of justice.

16) The Suits being R.C.S. Nos. 151/2021 and 173/2021 initiated by the Petitioners are ordered to be tagged with R.C.S. No. 23/2018 to be tried by Civil Judge Senior Division, Kolhapur as parties thereto and subject matter appears to be same.

17) Present Petitioners are restrained from interfering with peaceful possession of Respondent Satish over the Suit property till disposal of all the three Suits, however, developer Satish as reflected in Agreement of Development shall take care of the property so as to ensure that same shall not be encroached upon. He is also injuncted from creating third party interest in the Suit property but for fifteen sale deeds which are already executed. Said Satish shall file undertaking before the Court below within four weeks from today thereby placing on record all the copies of fifteen registered sale deeds alongwith an undertaking in the form of an affidavit that he

shall not be creating third party interest in relation to Suit properties and he shall secure Suit property by taking appropriate steps.

18) Both these petitions stand disposed of in the above terms.

[NITIN W. SAMBRE, J.]

IRESH SIDDHARAM
MASHAL

Digitally signed by IRESH
SIDDHARAM MASHAL
Date: 2022.04.13 17:12:44 +0530