

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

WRIT PETITION NO.237 OF 2022

Shri. Tukaram Maruti Dhamdhere and Anr. ..Petitioners
Versus

Shri. Amol Murlidhar Dhamdhere and Anr. ..Respondents

Mr. Vilas B. Tapkir a/w Mrunmayi Khambete, for the
Petitioners.

Mr. N. S. Pawar, for the Respondent Nos.1 & 2.

CORAM : NITIN W. SAMBRE, J.

**RESERVED ON : 4th FEBRUARY, 2022.
PRONOUNCED ON : 6th JUNE, 2022.**

P.C.

1. In Regular Civil Suit No.103 of 2018 pending on the file of Civil Judge, Junior Division, Ghodnadi, Shirur, Pune for declaration that the agreement of sale dated 25th November, 1983 as illegal and not binding and also for permanent injunction restraining the respondents/defendants from interfering with settled possession over the suit property of the petitioners, petitioners/plaintiffs took out application Exh.5 seeking temporary injunction which came to be allowed vide order dated 10th November, 2021. Trial Judge temporarily restrained the respondents/defendants from causing any disturbance to the peaceful possession of the petitioners/plaintiffs over the suit property.

2. Respondents/defendants feeling aggrieved preferred Misc. Civil Appeal No.270 of 2021 which came to be allowed vide impugned order dated 13th December, 2021 passed by the learned District Judge, Pune. Hence, this writ petition.

3. Facts necessary for deciding the present petition are as under :-

It is the case of the petitioners/plaintiffs that on 25th November, 1983 towards the security of hand loan of Rs.10,000/- their ancestors executed agreement of sale dated 25th November, 1983. It is claimed that since the said agreement was only for the security purpose, it was expressly agreed therein to hand over possession of the suit property at the time of execution of the sale-deed. According to the petitioners/plaintiffs, liability under the said agreement was extinguished within one year period.

4. However, taking undue advantage of non-cancellation of the said agreement of sale in express terms, respondents/defendants caused notice asking specific performance vide notice dated 14th June, 2008 which was duly resisted by causing reply to the said notice.

5. It is the contention of the petitioners/plaintiffs

that there exist revenue entry in their favour and so as to take undue advantage of such existence of agreement of sale which is unregistered document, defendants tried to dispossess petitioners on 21st February, 2018 resulting into filing of the suit for declaration of ownership and injunction.

6. Counsel for the petitioners, Mr. Vilas Tapkir would strenuously urge that the Trial Court while entertaining application for grant of temporary injunction has considered recitals in the agreement of sale dated 25th November, 1983 which fact in express terms provides for possession of the petitioners over the suit property and also specific recitals that the possession shall be handed over to the respondents/defendants at the time of execution of sale-deed. According to him, neither suit for specific performance is initiated by the respondents/defendants nor the sale-deed was got executed for obvious reason. The liability of loan of Rs.10,000/- was extinguished within one year. According to him, as such 7/12 extract remained in favour of the petitioners, so also the petitioners have drawn cash crop which are supplied to sugar factory which speaks of settled possession of the petitioner.

7. In the aforesaid background his contentions are, Appellate Court committed an error in appreciating claim of

the petitioners for grant of temporary injunction.

8. While countering the said submissions, Mr. N. S. Pawar, counsel appearing for the respondents/defendants would draw support from the order impugned passed by the learned District Judge. According to him, not only settled possession of the respondents/defendants can be inferred from the agreement over the suit property, but according to him, the same can be inferred from the fact that the defendants have supplied sugarcane from 2013-18. He would further claim that the orders passed in the proceedings under Section 145 of the CrPC would support his claim. That being so, the order impugned is sustainable. As such, he has sought dismissal of the petition.

9. I have considered rival submissions.

10. The suit of the petitioners for declaration and grant of injunction is based on title. The title of the petitioners over the suit property is not in dispute as the defendants have neither produced any title documents nor any such material to infer vesting of title.

11. It appears that once the title of the petitioners is not in dispute, the Court is required to appreciate the possession of either of the parties over the suit property.

12. On one hand, petitioners/plaintiffs are claiming possession over the suit property based on the recitals in the agreement of sale dated 25th November, 1983 as the recitals therein in express terms provides for handing over possession in favour of respondents/defendants. Reliance is also placed on the 7/12 extract i.e. revenue entries. On the other hand, it is claimed that the defendants are resting their claim for settled possession over the suit property from the agreement of sale dated 25th November, 1983, so also the document such as sugarcane supply receipt from 2013-18. In addition, certain affidavits of adjoining land owners are placed on record viz. Ankush Gaikwad. As far as aforesaid documents are concerned, it is required to be appreciated that law of registration contemplates mandatory registration of document viz. agreement of sale in case of handing over of possession. Admittedly, agreement of sale dated 25th November, 1983 is not a registered document. Even though the respondents/defendants have issued notice for specific performance in 2008, they have not taken any steps to lodge such claim for specific performance in court of law which as on date appears to be time barred.

13. Even if the revenue entries i.e. 7/12 extract is for fiscal purpose, however, consistency of such revenue entries in favour of the petitioners/plaintiffs needs to be appreciated. On one hand, petitioners are claiming that

they are in uninterrupted possession of the suit property without any obstruction in spite of agreement of sale dated 25th November, 1983. As such, revenue entries remained in petitioners/plaintiffs favour and on the other hand, defendants are relying on the agreement of sale dated 25th November, 1983. Recitals therein do not support case of the respondents/defendants of their settled possession over the suit property.

14. In the aforesaid background, the only inference which rightly so was drawn by the learned Trial Court was that the petitioners/plaintiffs were able to demonstrate their lawful possession over the suit property by virtue of inheritance of the same and also based on 7/12 extract i.e. revenue entries. Rightly so observed by the Trial Court, it was for the defendants to demonstrate their possession over the suit property, which they have failed to. Though the defendants have claimed that they have supplied sugarcane which was harvested from the suit property, however, the record in relation to such supply of sugarcane issued by the concerned sugarcane factory does not support case of the defendants.

15. Merely because there exist quasi-criminal proceedings under Section 145 of CrPC that by itself will not be considered in favour of the petitioners or respondents, as the outcome of the same is always subject

to the civil proceedings.

16. The Lower Appellate Court while passing order impugned has failed to appreciate the aforesaid evidence so as to infer settled possession of the petitioners over the suit property.

17. That being so, in my opinion, case for causing interference is made out. The order impugned dated 13th December, 2021 passed by District Judge, Pune in Misc. Civil Appeal No.270 of 2021 is hereby quashed and set aside.

18. The petition stands allowed in above terms.

[NITIN W. SAMBRE, J.]