

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3802 OF 2023

Changdeo Laxman Ghodke

Petitioner

Versus

Radhabai Babasaheb Shinde

Respondent

Mr. D.A. Bide, Advocate for the petitioner.

Mr. Rameez Shaikh, Advocate for the respondent.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 22nd AUGUST, 2023

ORDER :

1. Petitioner is aggrieved by the order passed by learned Civil Judge, Junior Division, Gangapur, below Exhibit-5 and 35 in Regular Civil Suit No. 141/2020, confirmed by the learned Ad-hoc District Judge-1, Vaijapur, in Miscellaneous Civil Appeal No. 17/2022.

2. Petitioner/plaintiff filed suit against the respondent/defendant for specific performance of oral agreement dated 01.03.2010 and injunction. Along with the suit, application Exhibit-5 is filed for injunction that during the pendency of the suit the defendant should not create third party interest in the suit property. Defendant appeared and opposed the suit by filing

written statement/say denying the pleadings in the plaint. She claims that she is owner and possessor of the suit property which was standing in the name of her deceased father. The plaintiff thereafter filed application Exhibit-35 seeking injunction against the defendant that she should not disturb the peaceful possession of the suit property which in possession of the plaintiff. Trial Court rejected both the applications by common order dated 25.04.2022. Petitioner unsuccessfully challenged the order of Trial Court by filing Miscellaneous Civil Appeal No. 17/2022.

3. Heard the learned advocate for the petitioner and learned advocate for the respondent. Perused the memo of writ petition, annexures thereto and the impugned order.

4. Present suit is filed by the petitioner for specific performance of oral agreement dated 01.03.2010. It further appears that respondent filed application dated 29.03.2020 to the Tahsildar for recovery of possession of the suit property, stating therein that the petitioner has unnecessarily obtained possession of the suit property from her. Said proceeding is disposed of by the Tahsildar observing that the dispute between the respondent and the petitioner is a civil dispute. Thereafter,

respondent filed Regular Civil Suit No. 276/2020, for possession and injunction in respect of the suit property. In this suit, application Exhibit-5 filed by the respondent for injunction is rejected by the Trial Court in view of the fact that as per the contention of respondent the petitioner has illegally obtained possession of the suit property in the month of May, 2020.

5. Considering the factual matrix and documents, I am of the view that the Trial Court has committed an error in rejecting the applications Exhibit-5 and 35 filed by the petitioner. Admittedly, respondent stays 22 km away from the suit property, at her matrimonial home. It is therefore clear that the petitioner has prima facie case and balance of convenience lies in his favour. Irreparable loss would be caused if interim injunction is refused to him.

6. Trial Court as well as the Appellate Court have failed to appreciate these aspects while passing the impugned orders. Appellate Court has gone to the extent of observing that the suit filed by the plaintiff is prima facie barred by limitation and no specific date regarding refusal on the part of the respondent to execute the sale deed is given. In the facts of this case, issue of

limitation, if any, can be decided only after parties lead their respective evidence. Trial Court and the Appellate Court have failed to appreciate the contentions of the respondent in the suit filed by her seeking recovery of possession of the suit property. In the light of aforestated facts, both the impugned orders cannot be sustained and same are liable to be quashed and set aside. In the result, following order:

ORDER

- I) Writ petition is allowed.
- II) Impugned order dated 25.04.2022, passed by learned Civil Judge, Junior Division, Gangapur, below Exhibit-5 and 35 in Regular Civil Suit No. 141/2020 and order dated 10.01.2023, passed by learned Ad-hoc District Judge- 1, Vaijapur, passed in Miscellaneous Civil Appeal No. 17/2022, are quashed and set aside.
- III) Applications Exhibit-5 and 35 are allowed.

[NITIN B. SURYAWANSHI, J.]