

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

58 WRIT PETITION NO.10013 OF 2022

**HUSEN BIN AHMAD BAJAYAM
VERSUS
HANIF HUSENMINYA SHAIKH AND ANOTHER**

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Advocate for Petitioner: Mr. Anil S. Bajaj
Advocate for Respondent Nos.1 and 2 : Mr. Shaikh Tarek Mobin H.

...

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 01-02-2023

PER COURT :

. By this petition, the petitioner has challenged the order of the Appellate Court dated 11.07.2022, upholding the order of the trial Court dated 30.03.2022 rejecting the petitioners application below Exh.5 for grant of temporary injunction.

2. The facts of the case are that on 11.12.2012 a sale deed came to be executed between the petitioner and the respondents in respect of an area admeasuring 41 R out of Gat No.299. Description of the property given in the sale-deed dated 11.12.2012 is as under :

‘पुर्वेस	:	मंगुजळगाव दर्गा रोड
पश्चिमेस	:	विक्रेत्याची उर्वरीत जमीन
दक्षिणेस	:	विक्रेत्याची उर्वरीत जमीन
उत्तरेस	:	विक्रेत्याची उर्वरीत जमीन’

3. In order to identify the property, a map came to be annexed which is at page-35 of the petition.

4. In the year 2015, the deed of rectification is alleged to have been executed between the petitioner and the respondents for correction of the boundaries. The dispute is as regards the boundary from the southern side inasmuch as in the sale-deed the boundary on the southern side shows the property of the respondent whereas in the deed of correction the southern side boundary is sought to be corrected as Mangujalgaon Darga Road. The said deed of correction dated 03.02.2015 is alleged by the petitioner to have been executed by the respondents.

5. In the year 2022, Regular Civil Suit No.1 of 2022 was instituted by the petitioner seeking an order of perpetual injunction restraining the respondents from interfering in the ownership and possession of the petitioner over the suit land Gat No.299 to the extent of 41 R as described in para-1 of the plaint. In the plaint the boundaries of the suit property is described thus:

‘East	:	Mangujalgaon Darga Road
West	:	Remaining land of respondent no.1
South	:	Mangujalgaon darga road

North : Remaining land of respondent no.1.'

6. The respondents filed their written-statement and opposed the relief claimed by the petitioner. It is the case of the respondents - defendants in the written-statement that the sale deed dated 11.12.2012 has been executed by fraud inasmuch as the respondents were informed that the document being executed for the purpose of converting the plot into an NA lay out. It is further case of the respondents in the written-statement that no consideration was paid.

7. As regards the deed of correction, it is stated in the written statement that taking advantage of illiteracy of the respondents, the petitioner once again attempted to change the boundaries of the suit property. However, upon enquiry by the Registrar, the respondents became aware of the actual position and hence the respondents refused the deed of correction.

8. In the order passed on the application for temporary injunction, the trial Court has observed that both the parties agreed about the execution of the sale-deed, however the boundaries which are mentioned in the sale deed are not the boundaries which are stated in the plaint and

due to difference in the location and the boundaries, the application for temporary injunction came to be rejected. The other ground on which the application was rejected by the trial Court was that the deed of correction was not duly registered. As against the order of the trial Court dated 30.03.2022 rejecting the petitioners' application for temporary injunction, the Misc Civil Appeal No.7 of 2022 was filed before the Appellate Court. The Appellate Court has rejected the appeal and has observed in the context of establishment of the *prima facie* case that the sale-deed dated 11.12.2012 discloses a different mode of signature of the respondents whereas the draft deed of correction dated 03.02.2015 *prima facie* discloses a different mode of signature on the sale-deed. The Appellate Court held that there was a dispute between the parties in respect of the location of the property and hence if the injunction is granted, it will cause the plaintiff to dispossess the defendant from their own other properties which is not the subject matter of the sale-deed.

9. Learned counsel for the petitioner has taken this Court through the sale-deed, the map which is annexed to the sale deed, the deed of correction and the written statement filed by the respondents and would urge that in the written-statement there is no denial to the execution of the Deed of Correction and the only

submission is that when the registrar enquired with the respondents, the respondent became aware of the fact and refused rectification. He would further submit that the Appellate Court has gone into an issue which was not raised by either of the parties and beyond pleadings and has come to erroneous observations as regards the mode of signature.

10. Per contra, the learned counsel appearing for the respondents supports the impugned order and submits that there are concurrent findings of fact. He would urge that since there is a dispute about the boundaries and suit property itself is not identified, there is no *prima facie* case made out. He would further submit that the balance of convenience is also not in favour of the petitioners inasmuch as the possession of the suit property is with the respondents. In support of his submissions, he relies upon the decision of this court in the case of **Dhondu Ganpat Solunke and others vs. Dashrath Tuaram Saroshe**, 2022 (4) Mh.L.J.] 253.

11. I have considered the rival submissions of the parties.

12. In the suit filed by the petitioner seeking order of perpetual injunction against the respondents, it is the case of the

petitioner that by a registered sale deed dated 11.12.2012, 41-R land out of Gat No.299 was sold by the respondents to the petitioner. It is not disputed that the sale-deed is a registered document and the map was annexed to the sale-deed. Execution of the sale-deed has not been disputed, however the respondents have come with a case that the sale is a result of fraud inasmuch that they were led to believe that the document is in respect of any lay out. It is to be noted that in spite of execution of this document in the year 2012, no efforts were taken by the respondents for cancellation of the sale-deed. The sale-deed shows the boundaries of the suit property, which have been reproduced above and the map which is annexed to the sale deed *prima facie* shows the existence on the road on the southern side. The learned counsel for the respondents has not disputed the map which forms part of the sale-deed. The entire dispute appears to be in respect of the deed of correction in which the boundaries were sought to be corrected. A perusal of the written-statement *prima facie* indicates that it is the case of the respondents that when they were informed by the Registrar about the alleged corrections, the respondents refused the rectification. As a specific case is set out in the plaint that the deed of correction has been executed between the petitioner and the respondents, it is expected that the denial to such a positive assertion should be specific. I do not find any specific denial

and a plain reading of para-5 of the written statement indicates that when the parties had visited the Registrar Office and the Registrar informed them about the alleged corrections, the respondents have refused the registration. In my opinion, this explains the reason why the deed could not be registered.

13. For an application for temporary injunction, the three essential requisites are *prima facie* case, balance of convenience and irreparable loss. As far as the *prima facie* case is concerned, the registered sale-deed read with unregistered deed of correction which has not been denied by the respondents would indicate that a part of the property of Gat No.299 was sold to the petitioner. There has been no proceeding initiated by the respondents for cancellation of the sale-deed. In spite of the suit for perpetual injunction being filed in respect of the same property, there is no counter claim filed in the said proceedings seeking to cancel the registered sale deed. Therefore, at this stage of grant of interim injunction, it cannot be said that no *prima facie* case is made out by the petitioner - plaintiff. As far as the possession is concerned, the respondents have made averment in the written statement that the possession of the suit property is with the respondents. However, there are no documents which have been submitted to show that the respondents are in

possession of the property. As against this, the registered sale-deed of the year 2012, the mutation entries and the disputed deed of execution *prima facie* show title of the Petitioners and possession usually follows the title. There is no document which has been produced by the respondents on record to dispute this position. As stated above, the boundaries in the plaint are in accordance with the deed of correction, which though unregistered, the validity thereof has to be tested at the time of the trial. As far as the Appellate Court is concerned, the Appellate Court without any pleading in that respect has taken upon itself a task of examining the signatures of the respondents on the sale-deed and the deed of correction and has come to a *prima facie* finding that the mode of signature is quite different. The Appellate Court has failed to take into consideration that the respondents' signatures appearing on the sale deed, the deed of correction as well as written statement which have been filed in this proceeding are completely different and therefore much reliance cannot be placed on the mode of signature. The Appellate Court has upheld the finding of the trial Court as far as the boundaries of the properties are concerned.

14. In my view, both the Courts below have failed to notice that the petitioner is holding a valid title under a registered sale deed

which has not been cancelled till date. The deed of correction even if disputed, its validity will have to be tested at the time of the trial and at the stage of temporary injunction in the absence of any document being produced by the respondents to show the possession, it has to be implied that possession follows title. In case of exercise of the discretionary jurisdiction, this Court is not expected to substitute its view for the view taken by the trial Court and the Appellate Court. However, in the present case, I find that the findings of the trial Court and the Appellate Court are perverse inasmuch as they have failed to take into consideration the relevant material on record and have been swayed by the fact that the deed of correction is unregistered. It was necessary for the trial Court and the Appellate Court to take into consideration the fact that the petitioner has a valid registered subsisting sale deed in his favour in respect of part of the property of Gat No.299 and the respondents have not cared to specify the property out of Gat No.299 which forms part of the sale deed. Merely by putting forward a case of a fraudulent sale deed, will not disentitle the petitioner from an order of temporary injunction.

15. Considering the above, the impugned order dated 11.07.2022 dismissing the Civil Appeal and the order dated 30.03.2022 passed by the trial Court are quashed and set aside.

16. Needless to state that the observations made herein are only for the purpose of deciding the validity of the order of temporary injunction and the trial Court has to proceed with the trial in accordance with the law and on merits of the case.

17. Writ Petition is accordingly allowed.

(SHARMILA U. DESHMUKH, J.)

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