

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4313 OF 2023

Subhash Mulukchand Shah

... Petitioner

Versus

Madhukar Krishna Vedpathak and Ors.

... Respondents

— —

Mr. Dilip Bodake for the Petitioner.

Mr. D.D. Rananaware with Mr.Manjeet Lotankar for the Respondents.

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CORAM : SHARMILA U. DESHMUKH, J.

DATE : July 04, 2023.

P. C. :

1. Heard.

2. The challenge in the petition is to the order of the Appellate Court dated 25th November, 2022 passed in Misc. Civil Appeal No.30 of 2022 confirming the order of the trial Court rejecting Exh.5 application preferred by the petitioner-original plaintiff seeking to restrain the Respondent from disturbing the Petitioner's possession over the suit property. For the sake of convenience the parties are referred to by their status before the trial Court.

3. Regular Civil Suit No.173 of 2022 was instituted by the plaintiff seeking declaration and injunction in respect of the suit property, described in paragraph 1 of the plaint as Grampanchayat property No.167 being CTS Nos.44 and 45 alongwith boundaries stated therein. The case of the plaintiff was that the said property was purchased on 4th January, 1988 from the original owner-Narhari Balwant Potdar by paying the consideration and by way of registered sale deed. It was the case of the plaintiff that there was a typographical error in the sale deed and instead of CTS Nos.44 and CTS No.45 and the sale deed, the property has been described as CTS No.48, however, the boundaries have been correctly stated. It was the case of the plaintiff that the occupant of the property of the southern side of the suit property i.e. the owner of CTS Nos.46 and 47 was threatening to encroach upon the plaintiff's property which lead to filing of RCS No.137 of 1993 which came to be decreed on 27th April, 2007.

4. It is further the case of the plaintiff that the legal heirs of the defendant's predecessors-in-title sought to mutate their names in the revenue record which application came to be allowed, as against which an appeal was filed by the plaintiff and the same was allowed

by order dated 29th December, 2017. The cause of action stated in the plaint is that on 17th April, 2022, the defendant had threatened to disturb possession of the plaintiff over the suit property, and as such, the suit was filed for a declaration that the plaintiff is the owner of the property and restraining order was sought restraining the defendant for interfering with the plaintiff's possession and by the application below Exh.5 interim relief was sought, which came to be rejected, which order was confirmed by the Appellate Court by the impugned order giving rise to the present petition.

5. Heard Mr. Dilip Bodake, learned counsel appearing for the Petitioner and Mr.D.D. Rananaware, learned counsel appearing for the Respondents.

6. Mr. Bodake, learned counsel appearing for the Petitioner has invited the attention of this Court to the sale deed which is annexed at page no.78 of the petition. He would point out that as per the sale deed executed on 4th January, 1988, the boundaries match with the boundaries of the suit property described in the plaint instead of CTS Nos.44 and 45 by reason of a typographical error CTS No.48 is mentioned in the sale deed. He would further submit that

the ownership of the plaintiff in respect of the suit property is *prima facie*, proved by the assessment extract which at page 61 of the petition, which records the name of the plaintiff as the owner in respect of the property being 168/1, which is CTS Nos.44 and 45. He has also pointed out the certificate issued by the Grampanchayat dated 29th April, 2022 stating that the plaintiff is the owner of the property being CTS Nos.44 and 45 and the property tax till the year 2021 has been paid. He would further submit that in spite of *prima facie* evidence brought on record, the trial Court as well as the Appellate Court has declined to grant interim relief in his favour. He would further contend that the RCS No.137 of 1993, which was instituted by the plaintiff against the vendors of the defendant was decreed, in which one of the issues was whether the suit property was in occupation of the plaintiff. He has invited the attention of this Court to the operative part of the judgment passed in RCS No.137 of 1993, where the defendants therein were directed to remove the iron angle and sheds which were constructed on the compound wall situated on the southern side of Grampanchayat property no.167. He submits that the Appellate Court has misdirected itself as regards the judgment passed in RCS No.137 of 1993.

7. *Per contra*, learned counsel appearing for the Respondents has pointed out that the sketch map, on which the reliance was placed by the trial Court while rejecting the application. He has pointed out that the property mentioned in the sale deed is CTS No.48 which is adjoining the road on the western side and the same boundaries are mentioned in the sale deed. As such he would contend that the sale deed has been executed in respect of CTS No.48. He has further pointed out the order of the Deputy Director of Land Records, which is at page 105 of the petition, in which there is a categorical finding that the boundaries mentioned in the sale deed and the boundaries of CTS No.48 are identical. He would further invite the attention of this Court to the findings of the trial Court as well as the Appellate Court which has considered the material on record.

8. Considered the submissions of the parties.

9. The plaintiff has come with a case that there was a typographical error in the sale deed which was executed in the year 1988 and by reason of the typographical error instead of CTS Nos.44 and 45, the CTS No.48 is mentioned. If the sketch map, which is

annexed at page no.193 of the petition is perused, the same discloses that the property being CTS No.48 is bounded by the road on the western side and on the eastern side there are the properties viz. CTS Nos.44 and 45. The trial Court as well as the Appellate Court has placed reliance on the city survey map as well as the findings of the Deputy Director of Land Records that the boundaries which are mentioned in the sale deed and the boundaries of CTS No.48 are identical. Based on the *prima facie* findings, the trial Court as well as the Appellate Court have come to the conclusion that the *prima facie*, the plaintiff was the owner of plot being CTS No.48 and not CTS Nos.44 and 45. These findings were supported by the observations of the Deputy Director of Land Records.

10. The aspect which needs to be considered is that the sale deed which has been executed in the year 1988 has not been rectified till date. There is no explanation tendered either before the Trial Court or before this Court as regards the non-rectification of the sale deed. By allowing the sale deed to remain as it is *prima facie*, plaintiff has accepted the description of the property mentioned therein viz. CTS No.48. It appears that when the defendants sought to carry out the construction on their own property i.e. CTS Nos.44 and 45, the

present proceedings have been instituted. As regards the decree passed in RCS No.137 of 1993, the said proceedings were not in respect of declaration of any title in respect of CTS Nos.44 and 45, and by the decree, the direction was given to the defendants therein only to the remove iron angle and sheds. The Appellate Court in my opinion, has rightly appreciated the findings of the trial Court.

11. In light of the above, in exercise of the powers under Article 227 of the Constitution of India, I find no reason to interfere with the concurrent findings. The writ petition is devoid of merits and stands dismissed.

12. Needless to clarify that the observations made are only for the purpose of deciding the validity of the impugned orders and the trial Court to decide the matter on its own merits uninfluenced by the observations made hereinabove.

(Sharmila U. Deshmukh, J.)