



Harish

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7048 OF 2019

Appasaheb Amagonda Patil

...Petitioner

Versus

Satgonda Babu Patil & Ors.

...Respondents

Mr. N. J. Patil i/b & Mr. Amey Patil for the Petitioner.

Mr. Yogesh Morbale for Respondent No. 1.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : AUGUST 9, 2023

P. C. :

1. The challenge in the Petition is to the order dated 26th March, 2019 passed by the Appellate Court in Misc. Civil Appeal No. 12 of 2017 modifying the order of the Trial Court and allowing the cross-objection of the Respondent No. 1 resulting in allowing the application filed below Exhibit-5 in its entirety. The Petitioner herein is the Original Defendant No. 1 and the Respondent herein is the Original Plaintiff. For the sake of convenience, the parties are referred to by their status before the Trial Court.

2. Regular Civil Suit No. 414 of 2015 was instituted by the Plaintiff

seeking specific performance of agreement of sale dated 5th February, 1981 in respect of the property described as land admeasuring 19R out of Gat No. 66 which was totally admeasuring 1 hector 16R. The Plaintiff also sought a declaration of ownership in respect of property described as 1b in the plaint i.e. construction numbered as Grampanchayat property No. 1257, 1258 and 1223 and tin shed admeasuring 15X20 ft. The case of the Plaintiff was that by the agreement of sale of the year 1981 the property described in paragraph 1a was agreed to be sold for a sum of Rs. 5,000/- as against which part of purchase price of Rs. 4,500/- was paid and possession was handed over. It is pleaded that, subsequent to the handing over of the possession, the construction was carried out by the Plaintiff and he is in possession of the Grampanchayat property No. 1257 for himself and the Grampanchayat property No. 1258 and 1223 was constructed for the purpose of residence of his brothers. The cause of action is stated to have arisen when in response to the Plaintiff's notice, the Defendant No. 1 by its reply dated 31st March, 2018 refused to execute the sale deed.

3. In the application below Exhibit-5 seeking restraining orders against the Defendant No. 1 from obstructing the peaceful possession of the Plaintiff, the Trial Court partly allowed the application and passed restraining orders only in respect of the Grampanchayat property No.

1257 as against which Defendant No. 1 preferred an appeal, and the Plaintiff preferred cross objections. By the impugned order, the cross objection of the Plaintiff was allowed and the application below Exhibit-5 was granted in its entirety giving rise to the present Petition.

4. Heard Mr. N. J. Patil for the Petitioner and Mr. Yogesh Morbale for the Respondent No. 1.

5. Learned counsel appearing for the Petitioner submits that the suit has been preferred in the year 2015 seeking specific performance of an unregistered agreement of sale of the year 1981. He would further contend that, the suit property is touching to the property of the Plaintiff on the northern side and that the Defendant No. 1 had filed a suit bearing Regular Civil Suit No. 164 of 2015 against the brother of the Plaintiff in which permanent injunction was granted restraining the brother of the Plaintiff from interfering with the possession of the Defendant No. 1 in respect of the Gat No. 66 which indicates that the Defendant No. 1 is in possession of the suit property. He would further submit that the Defendant No. 2 to 6 have filed their written statement in which it is claimed that they are the tenants of Defendant No. 1 which shows the possession of the Defendant No. 1 over the suit property.

6. *Per contra*, learned counsel appearing for the Plaintiff submits that

out of the entire Gat No. 66 admeasuring 1 Hecter 16R, the Defendant No. 1 claims to be in possession of the 86 R by showing that till the year 2015, in the crops column, the cultivation is shown as self cultivation of Defendant No. 1. He would further submit that from the written statement filed by Defendant No. 2 to 6 it is revealed that there are house properties which are detailed in paragraph No. 1b and as such, it cannot be believed that the Defendant No. 1 has taken crops in the suit property. He would submit that the recital in the agreement of sale shows that that possession of the suit property described in paragraph No. 1a of the plaint was handed over to the Plaintiff at the time of execution of the sale.

7. Considered the submissions and perused the papers with the assistance of learned counsel appearing for the parties.

8. The Defendant No. 1 has denied that the possession was handed over at the time of execution of the agreement of the sale of the year 1981. In support of his contention, Defendant No. 1 has relied upon the crop cultivation of the year 2014-15 which shows that the land has been cultivated by the Defendant No. 1. The documents filed by the Plaintiff would indicate that the name of the Plaintiff is mutated in respect of the Grampanchayat property No. 1257 and the Grampanchayat property No. 1258 and 1223 are mutated in the name of Defendant No. 2 to 6. The Grampanchayat records would therefore *prima facie*, shows that the suit

property described in paragraph No. 1a is not an agricultural land and there are houses which are constructed and which have been numbered by the Grampanchayat. The Defendant Nos. 2 to 6 have come with the case that they are tenants of the Defendant No. 1, however, as rightly observed by the Appellate Court, that Defendant Nos. 2 to 6 have not produced any material on record to demonstrate the relationship of landlord and tenant between Defendant No. 1 and them. There also appears to be a discrepancy between the stands taken by Defendant No. 1 and Defendant Nos. 2 to 6, inasmuch as, Defendant No.1 states till date, the property described in paragraph No. 1a is under cultivation and on other hand the Defendant Nos. 2 to 6 who apparently support the case of the Defendant No. 1, in fact raises a contradictory case that they are the tenants of the Defendant No. 1 in respect of house properties which are constructed on the property No. 1a. At the interim stage what is required to be seen is whether the Plaintiff has made out a prima facie case of the possession of the property. As regards the Grampanchayat property No. 1257, the records indicates the name of the Plaintiff and in respect of Grampanchayat property No. 1258 and 1223 the same are mutated in the name of Defendant Nos. 2 to 6. There is no material which has been produced on record to demonstrate that the Defendant No. 1 is in possession of the suit property. Reliance is placed on the decision in

Regular Civil Appeal No. 13 of 2018 arising out of Regular Civil Suit No. 164 of 2015 which was instituted by the Defendant No. 1 against the brother of the Plaintiff, however, it needs to be noted that the subject matter in the said proceeding was a tin shed of dimension 15X15 ft. constructed on land Gat No. 66 total admeasuring 1Hector 16R. From the judgment passed in Regular Civil Appeal No. 13 of 2018 dismissing the challenge to the judgment and decree passed in favour of the Defendant No. 1 it cannot be said that the tin shed which is of the dimension 15X15 is in fact constructed on the property which is described in paragraph No. 1a of the instant suit i.e. Regular Civil Suit No. 414 by 2015. The property No. 1b includes a tin shed, however the dimension thereof are 15X20 ft. and as such, there appears to be a discrepancy in respect of subject matter of Regular Civil Appeal No. 13 of 2018 and the instant case.

9. The Trial Court on the basis of the mutation entries have held that the Plaintiff is in possession of only Grampanchayat property No. 1257, and, had refused injunction as regards the remaining property. However, it needs to be noted that the agreement for sale was executed in respect of 19R land out of entire Gat No. 66 and there is no material produced by the Defendant No. 1 to show that the recitals in the agreement of sale as regards the handing over of the possession was not acted upon and that

the possession remained with the Defendant No. 1. *Prima facie*, the same seems to be improbable as there is no explanation forth coming as to how the houses are constructed on the suit property described in paragraph No. 1a if the possession was not handed over by the Defendant No. 1 as the Defendant No. 1 does not claim that he has constructed the house properties. The existence of house properties is *prima facie* proved by the Grampanchayat records and specific assertion of Plaintiff is that the house properties are constructed by the Plaintiffs. There is an agreement of sale in favour of the Plaintiff and in absence of any material produced by Defendant No.1 to prove possession, *prima facie* possession will follow title. Even if it is assumed that the Defendant Nos. 2 to 6 have been inducted as tenants of Defendant No. 1 there is not explanation as to how the name of the Plaintiff is mutated in Grampanchayat property No. 1257. From perusal of the material produced on record, it is not shown as to how, if the possession was not parted with, the Plaintiff has constructed the house property on suit property No. 1a.

10. Learned counsel appearing for the Defendant No. 1 has relied upon the decision of the Apex court in the case of ***Balram Singh Vs. Kelo Devi***, [(2022) SCC Online SC 1283]. However, the decision of the Apex Court was rendered in a challenge against decision in Second Appeal. The facts of that case would indicate that the original Plaintiff therein had filed

a suit for permanent injunction based of an unregistered agreement of sale and in that context, the Apex Court has held that the Plaintiff therein cannot get the relief of permanent injunction on the basis of unregistered agreement of sale when there is no substantial relief for specific performance of agreement to sale being sought. The decision does not assist the case of the Petitioner for the reason that in the present case the suit is not for a simplicitor injunction and specific performance of agreement to sale is sought.

11. The Appellate Court by modifying the order of the Trial Court has rightly considered that as the houses are constructed on suit property, the defence of Defendant No.1 that he is taking crops on the entire suit property cannot be believed. Having regard to the above, *prima facie* it appears that the Plaintiff is in possession of the suit property since the execution of agreement of sale of the year 1981. The case of the Defendant No. 1 that he was cultivating suit property appears to be improbable especially if in light of the written statement of Defendant Nos. 2 to 6 that they are tenants in respect of the houses which are constructed on the suit property described in paragraph No. 1a. As the Plaintiff has *prima facie* established that he is in possession on the suit property, the balance of convenience tilts in favour of the Plaintiff, and if, the injunction as prayed for is not granted, irreparable loss would be

caused to the Plaintiff. It also needs to be noted that the injunction is running against the Defendant No. 1 since the year 2019 and as such, after a period of 4 years I am not inclined to interfere with the impugned order dated 26th March, 2019.

12. In light of the above, the Petition fails and stands dismissed.

(SHARMILA U. DESHMUKH, J.)