

Harish

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

SECOND APPEAL NO.384 OF 2021

WITH

INTERIM APPLICATION NO.3362 OF 2021

IN

SECOND APPEAL NO.384 OF 2021

Hanmant Tukaram Sargar

...Appellant/
Applicant

Versus

Ankush Maruti Chavan & Anr.

...Respondents

WITH

SECOND APPEAL NO. 298 OF 2022

Ankush Maruti Chavan & Anr.

...Appellants

Versus

Gajanan Ramu Magdum & Anr.

...Respondents

Mr. Umesh H. Pawar, for the Appellant in SA/384/2021 & for Applicant in IA/3362/2021 in SA/384/2021 & for Respondent No. 2 in SA/298/2022.

Mr. Balwant Salunkhe, for the Appellant in SA/298/2022 & for Respondent Nos. 1&2 in SA/384/2021.

Mr. Umesh Mankapure, for Respondent No. 1 in SA/298/2022.

Mr. A. R. Patil, Addl. Gov. Pleader, for the state.

Mr. G. S. Keluskar for Respondent No. 4 in SA/384/2021 & for Respondent No. 4 in SA/298/2022.

CORAM : MADHAV J. JAMDAR, J.

DATE : 13th FEBRUARY, 2023

P.C.:

1. Heard Mr. Umesh Pawar, learned counsel appearing for the Appellant in Second Appeal No.384 of 2021 and Mr.

Balwant Salunkhe, learned counsel appearing for the Appellants in Second Appeal No. 298 of 2022. Both of them have appeared in respective Second Appeals for the respective Respondents. Also heard Mr. A. R. Patil, learned Addl. Gov. Pleader, Mr. Umesh Mankapure, learned counsel for Respondent No. 1 in Second Appeal No. 298 of 2022 and Mr. Keluskar, learned counsel for Respondent No. 4.

2. The Appellant in Second Appeal No. 384 of 2021 is the Original Defendant No. 2 The Appellants in Second Appeal No. 298 of 2022 are the Original Plaintiffs. The original Plaintiffs filed the suit for declaration and for injunction. It is the contention of the original Plaintiffs that, the suit property is belonging to them. To substantiate said contention, the original Plaintiffs have relied on sale deed dated 4th March, 2005 executed by Krishnpal Kore in favour of Plaintiff No. 1 Ankush Chavan (Exhibit-50). It is the contention of Plaintiff that, in the year 2014, there was Loksabha Election at Sangli district and the Defendant Nos. 1 and 2 requested them to give the suit property for opening an office for canvassing in the election and therefore, the possession of the suit property was delivered to Defendant

Nos. 1 and 2 as gratuitous licensee. It is contended that, the Defendant failed to vacate the suit premises and therefore, the Original Plaintiffs were constrained to file the Suit.

3. Both the Courts have concurrently held that the Plaintiffs failed to prove the ownership. It has been concurrently held that the Government of Maharashtra is the owner of the suit property. Mr. Balwant Salunkhe, learned Advocate appearing for the Appellants/Plaintiffs is not in a position to show that Mr. Krishnpal Kore, the vendor of Plaintiffs has got any right, title or interest with respect to the suit property. On the basis of the evidence on record, both the Courts have concurrently held that the Government of Maharashtra is the owner of the suit property.

4. It is also significant to note the contention raised by the Defendant No. 2 i.e. the Appellant in Second Appeal No. 384 of 2021. The Defendant No. 2, in his written statement specifically stated that the suit property is the property of Government of Maharashtra and as nobody was occupying the suit property, several persons have encroached on the suit land and constructed the tenements. Accordingly, Defendant No. 2 has also encroached the suit land and

constructed the tenement i.e. the suit property.

5. Both the learned Courts have recorded concurrent finding that the Government of Maharashtra is the owner of the suit property, the sale deed dated 4th March, 2005 is not a valid sale deed as vendor i.e. said Krishnpal Kore has no right, title and interest and therefore, the Plaintiffs do not get any valid right, title and interest in the suit property. There is nothing to show that the concurrent finding recorded by both the learned Courts suffer from any legality or perversity. After recording these findings the learned Trial Court has only dismissed the Suit. However, the learned First Appellate Court after recording these findings, issued certain direction. The operative portion of the Judgment and Decree dated 29th October, 2021 of the learned Principal District Judge, Sangli is set out herein below for ready reference;

- “ 1. The Appeal stands dismissed with costs.
2. The Collector, Sangli is requested to take action against Defendant Nos. 1 and 2 or whoever found in possession of the suit property as provided u/s 53 of the Maharashtra Land Revenue Code, 1966 and to evict them from the suit property, within one month from the date of this

order and protect the suit property.

3. The Superintendent of Police, Sangli is requested to register crime against Krushnapal Shankar Kore aged 47 years, R/o Nagraj Colony, 100 ft. Road, Sangli, Plaintiff Nos. 1 and 2, for preparing a forged sale deed bearing no. 606 dated 04.03.2005 in respect of the suit property.
4. The copy of this Judgment be forwarded to the Collector, Sangli and Superintendent of Police, Sangli for taking necessary action as directed above.
5. Decree be drawn accordingly.”

6. As far as dismissal of the Appeal is concerned, both the Courts have concurrently found that, Shri. Krishnpal Kore, the Vendor of Plaintiffs had no right, title and interest and the property belongs to the Government of Maharashtra and therefore, rightly dismissed the Suit as well as the Appeal.

7. The only submission of the learned counsel appearing for the Appellants in both the appeals is regarding direction issued by the learned Principal District Judge, Sangli at Sr. Nos. 2, 3 and 4. It is their submission that the learned Civil Court could not have issued such directions. It is their

submission that, Collector, Sangli as well as the Superintendent of Police, Sangli were not party to the Suit and in the plaint, the reliefs in terms of above direction Nos.2, 3 and 4 were not sought and, therefore, issuance of such direction is not permissible and the same are outside the scope of the Suit.

8. It is significant to note that, challenging the impugned Judgment and Decree of the learned Principal & District Judge, Sangli passed in Regular Civil Appeal No. 79 of 2016 dated 29th October, 2021, the Original Defendant No.2 filed Second Appeal No. 384 of 2021 on or about 15th November, 2021. The said Second Appeal along with Interim Application No. 3362 of 2021 came up before a learned Single Judge and following Order came to be passed on 18th November, 2021;

" Issue notice to the Respondent, returnable on 21st January, 2022.

Learned Advocate for the Appellant is directed to supply spare copies of the complete compilation of the Appeal and Interim Application in the registry of this Court within a period of two weeks from today.

It is made clear that, this Court has not granted stay to the impugned Judgment and Order dated 29th October, 2021 and the Collector, Sangli is permitted to comply with the clause No. 2 of the operative part of the said Order dated 29th October, 2021 passed in Regular Civil Appeal No. 79 of 2016."

(Emphasis added)

9. It is admitted position that the Defendant No. 2 i.e. Appellant in the Second Appeal No. 384 of 2021 has been dispossessed from the suit property by taking action under Section 53 of the Maharashtra Land Revenue Code, 1966. It is the contention of Mr. Umesh Pawar, learned counsel appearing for the Appellant that, the said action is totally illegal.

10. For the above reasons, it is made clear that, both the Second appeals are dismissed, as far as decrees regarding dismissal of Suit bearing Regular Civil Suit No. 288 of 2014 and dismissal of Regular Civil Appeal No. 79 of 2016 are concerned. However, both the Second Appeals are admitted on the following substantial questions of law:-

i] Whether the learned First Appellate

Court has got jurisdiction to issue direction to Collector, Sangli to take action against Defendant No. 1 and 2 or against whoever is found in possession of the suit property as provided under Section 53 of Maharashtra Land Revenue Record 1966 and to evict them from the suit property within a period of one week from the said order?

ii] Whether the learned First Appellate Court has got jurisdiction to issue direction to the Superintendent of Police, Sangli to register the crime against Krishnpal Shankar Kore and Plaintiff Nos. 1 and 2 for preparing forged sale deed dated 4th March, 2005 in respect of the suit property?

iii] Whether the First Appellate Court could have granted relief beyond the frame of the Suit?

11. It is admitted position that the action under Section 53 of the Maharashtra Land Revenue Code, 1966 is already taken and the Appellant in Second Appeal No. 384 of 2021 has already been evicted from the suit property. It is further significant to note that the learned Single Judge by order dated 18th November, 2021 has not granted any stay and in

fact permitted the Collector, Sangli to comply with clause No. 2 of the operative part of the said order dated 29th October, 2021 passed in Regular Civil Appeal No. 79 of 2016. Therefore, the reliefs in Interim Application No. 3362 of 2021 are specifically refused. The reliefs in Interim application can not be granted *inter alia* for the following reasons :

i] The Appellant in Second Appeal No. 384 of 2021 i.e. the Defendant No. 2 has specifically come up with the case in the written statement that the suit property is belonging to the Government of Maharashtra and in fact, it is admitted in the written statement that the suit property is encroached by the Defendant No. 2 as well as some other third person. Apart from this, both the Courts have concurrently found that, the Government of Maharashtra is the owner of the suit property and the sale deed is fraudulent.

ii] Further, the learned Single Judge by order dated 18th November, 2021 has not granted any interim relief and in fact has specified that this Court has not granted stay to the impugned Judgment and Decree dated 29th October, 2021 and further observed that

the Collector, Sangli has permitted to comply with clause No. 2 of the operative part of the order dated 29th October, 2021 passed in Regular Civil Appeal No. 79 of 2016.”

12. For the above reasons, the stay as sought is not granted and Interim Application No. 3362 of 2021 is dismissed.

13. The Appellant in Second Appeal No. 384 of 2021 i.e. Defendant No. 2 is permitted to remove his belongings which are lying in the suit premises. The Respondent No. 5 i.e. Collector, Sangli shall permit the Appellant i.e. Hanmant Tukaram Sargar to remove his belongings which are lying in the suit property. The Appellant in Second Appeal No. 384 of 2021 i.e. Hanmant Tukarma Sargar to remain present on the suit property on 24th February, 2023 at 11:30 a.m. The Respondent No. 5 i.e. State of Maharashtra through Collector, Sangli shall allow the Appellant to remove his goods lying in the suit premises.

14. For the above reasons, the Second Appeal is admitted only on the limited grounds as indicated hereinabove. The impugned Judgment and Decree of the learned Trial Court of the dismissal of the Suit and of the learned First Appellate Court to the extent of the dismissal of the Appeal are

confirmed.

15. Interim Application No. 3362 of 2021 is dismissed.

(MADHAV J. JAMDAR, J.)