

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3106 OF 2023

Hanmant Vithal Patil and Ors.	...	Petitioners
<i><u>Versus</u></i>		
Chairman Krushi Utpanna Samiti and Ors.	...	Respondents

— —
Mr. Umesh R. Mankapure, Advocate for the Petitioners.
“Mr. B.G. Ligade, for Respondent Nos.2 to 5”.
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CORAM : SHARMILA U. DESHMUKH, J.

DATE : July 25, 2023.

P. C. :

1. The challenge in the petition is to the order dated 9th February, 2023 passed in Misc. Civil Appeal No.170 of 2020 passed by the trial Court below Exh.5 in Special Civil Suit No.986 of 2020.

2. Special Civil Suit No.986 of 2020 was instituted by the Petitioners against the Respondents seeking partition and separate possession of the Petitioners' share in the suit property and perpetual injunction restraining the Respondent Nos.2 to 6 from carrying out any construction in the suit properties. Survey No.1367/15/1 and Gut No.3755 situated at Sangali district are the suit properties.

3. The case of the plaintiff is that the original Survey No.1367/15 alongwith other properties were owned by the common ancestors of the Petitioners and the Respondent Nos.2 to 6 viz. Baburao Patil. The Petitioners are the legal heirs of Vitthal Baburao Patil and the Respondent Nos.2 to 6 are the legal heirs of the Tukaram Baburao Patil. Vitthal and Tukaram are sons of Baburao Patil.

4. It is stated that the ancestral property was partitioned prior to 1964 and accordingly, the mutation entry No.6481 was effected. It is stated that as regards the Survey No.1367/15, the predecessors of the Petitioners and the Respondent Nos.2 to 6 held equal share of 8 Anne jointly and the other properties were partitioned and accordingly, mutation entry was effected. It is further stated that as regards Survey No.1367/15 Vitthal Baburao Patil and Tukaram Baburao Patil were in joint ownership to the extent of 8 Anne share each and was occupied and used by them jointly. It is stated that as regards this property there was no partition and as such, the same remained undivided. It is further stated that despite the said position, Tukaram without informing Vitthal executed a sale deed in favour of one Sidha Babaji Mudhe in respect of 13 Anna 3 ps. share of Survey No.1365/15 vide registered sale deed dated 29th May, 1969. It is stated that Tukaram

Patil did not have share of 13 Anna 3 Ps., in the said survey No.1367/15, and as such, Sidha Mudhe did not acquire any title to the said property by virtue of the said sale deed and that the possession was also not handed over.

5. It is further stated that in spite of undivided share of Vitthal in the said property, mutation entry No.8724 was effected without any notice to Vitthal and the name of Sidha Mudhe was inserted to the extent of 13 Anna 3 Ps. share and without any notice to Vitthal, Vitthal's name came to be removed from the revenue record. It is further stated that after the execution of the sale deed, Tukaram and Sidha in collusion with the revenue authorities have prepared a independent 7/12 extract in respect of Survey No.1367/15/1 showing the share of Tukaram Patil and Sidha Mudhe.

6. It is further stated that suit property 1B i.e. survey No.1367/15/2 i.e. new Gut No.3755 admeasuring 31 R has been sold to the Respondent No.1 about which no notice was given to Vitthal and mutation entries were effected in favour of the Respondent No.1. It is further stated that even after taking 13 Anna 3 Ps share by virtue of the sale deed executed by Tukaram the remaining 3 Anna 3 Ps.

share was owned by Vitthal. However, the Respondents by virtue of the mutation entry No.8724 have inserted their name to the said 2 Anna 9 Ps share. As such, the suit came to be filed seeking relief of possession of 8 Anna share and perpetual injunction as against the defendant nos.2 to 6.

7. In the application for temporary injunction, the Petitioners sought restraining order against the defendant nos.2 to 6 in respect of suit property 1A, restraining the defendant nos.2 to 6 from carrying out any construction on the suit property. Initially, the trial Court by order dated 15th September, 2020 granted *exparte* order of *status quo*. Subsequently, vide order dated 3rd December, 2020, the application came to be rejected. The trial Court held that the sale deed was executed in the year 1969 and no objection was raised for a period of almost 51 years. It was further held that no relief of cancellation of sale deed was sought and as such, Section 41 (h) of the Specific Relief Act, 1963 applies.

8. The trial Court observed that Vitthal had signed the sale deed executed in the year 1969 and no objection was raised during his lifetime and even after the death of Vitthal in the year 1985, for which

no explanation has been offered. The trial Court took into consideration the factum of execution of the sale deed in the year 1969, the implementation of amalgamation scheme, acquisition proceedings in respect of the suit property 1B, the mutation entries in the name of Respondents and the issue of limitation and as such, rejected the application.

9. The Appellate Court observed that the mutation entry No.6481 shows that half share land in Survey No.1367/7, 1367/8, 1367/15 and 1367/17 was allotted to each brother. However, there is no entry that Survey No.1367/15 was kept joint and as such, discarded the contention of the Petitioners that only property bearing Survey No.1367/15 was kept joint. The Appellate Court observed that it is not disputed that the name of Vitthal had disappeared from the 7/12 extract. The Appellate Court further held that Tukaram had sold 13 Anna 3 Ps. share in the said land to Sidha Mudhe, in Survey No.1367/15 and Sidha Mudhe sold 12 Anne 4.5 Ps. to share defendant nos.7 and 8 and that the revenue entries show the name of defendant nos.7 and 8 in the 7/12 extract.

10. The Appellate Court further observed that the partition

took place in the year 1964 and the sale deeds were executed in the year 1969, however, till the year 2020 no objection was taken and that there is no material on record to show that the Petitioners were in possession of the suit property and as such rejected the appeal filed by the Petitioners.

11. Considered the submissions.

12. The case of the plaintiff is that the property bearing Survey No.1367/15 remained undivided whereas the other properties were partitioned prior to the year 1964. The plaintiff claims that in year 1969, out of Survey No.1367/15, 13 Anne 3 Ps. share had been sold by Tukaram to Sidha Mudhe which has thereafter being sold to defendant nos.9 to 11. Pertinent to note that in the suit, there is no challenge to the sale deed of the year 1969 and indeed cannot be so for the reason that the predecessors-in-title of the Petitioners i.e. Vitthal Patil was a witness to the sale deed. Vitthal during his lifetime did not lay any challenge in respect of the suit property 1A and after his death which is stated to have taken place in the year 1985, the plaintiff had also not raised any objection seeking cancellation of the sale deed. It is only in year 2020 that the present suit has been filed claiming partition of the

suit property alongwith possession and perpetual injunction.

13. As noted by the trial Court, the issue of limitation and the execution of the sale deed in year 1969 indicate that the proceedings in question have not been instituted within a prescribed period of limitation. That apart it needs to be noted that since the year 1969, the suit property 1A has been in possession of Sidha Mudhe and thereafter, the subsequent transferee. There is no material which has been produced on record to show that the possession of the suit property was with Vitthal and subsequently with plaintiff. For the purpose of claiming interim injunction, there has to be *prima facie*, case made out by the plaintiff, which the plaintiff has failed to do. Apart from the admitted position of execution of the sale deed year 1969, there are mutation entries in respect of the property 1A in favour of the Sidha Mule, Tukaram Patil and defendant nos.7 and 8 in the 7/12 extract. No doubt that the name of Vitthal had disappeared from 7/12 extract, however, that cannot be the sole reason to grant an interim injunction against the subsequent transferee, who have acquired the same under registered sale deed.

14. As regards the balance of convenience, it is stated that the

defendant nos.2 to 6 are in possession of land and they have started the construction on the said land and as such, at this stage, if at interim stage without any *prima facie*, case being made out by the Petitioners, the construction is stopped, the defendant nos.2 to 6 will suffer irreparable loss. Another aspect which tilts the scales in favour of the defendant nos.2 to 6 is that there was a previous partition prior to the year 1964 of the other properties and the claim of the plaintiff is that only property bearing Survey No.1367/15 was kept joint. The Appellate Court has considered the entries and has observed that there is no such recital in the entries that the other properties are allotted two exclusive shares and that only survey No.1367/15 has been kept joint. As such, the finding of the Appellate Court is that as per the mutation entries, all properties were partitioned between Tukaram and Vitthal.

15. In view of the above, there is no infirmity in the concurrent findings of the trial Court and the Appellate Court. The writ petition being devoid of merits stands dismissed.

(Sharmila U. Deshmukh, J.)

(This order is corrected pursuant to the Speaking to the Minutes of the order dated 3rd August, 2023.)