

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10485 OF 2019

Shri Kailas Daulatrao Kale

... Petitioner

Versus

Smt. Mangal Dilip Bhujbal and Ors.

... Respondents

— —
Mr. Uday B. Nighot for the Petitioner.
— —

CORAM : SHARMILA U. DESHMUKH, J.

DATE : August 4, 2023.

P. C. :

1. Heard.

2. The challenge in the petition is to the concurrent findings of the Trial Court and the Appellate Court rejecting the petitioner's application for injunction.

3. Special Civil Suit No.1113 of 2016 was instituted by the plaintiff seeking specific performance of an agreement of sale of the year 2012. In those proceedings, an application came to be filed below Exh.5 seeking restraining order which was rejected, as against which the appellate proceedings were preferred and the appeal came to be dismissed, giving rise to the present petition.

4. Mr. Nighot, learned counsel appearing for the Petitioner submits that the original owner-Dilip Bhujbal had executed the development agreement dated 7th July, 2007 in favour of the Respondent nos.4 and 6 and possession was handed over. He would contend that the Petitioner had purchased this property from the Respondent nos.4 and 6 and the possession was handed over to the petitioner. He would contend that after the death of Dilip, the wife and the sons of the deceased-Dilip, mutated their name in the 7/12 extract and as such, mutation entry being effected in favour of wife and sons of deceased-Dilip i.e. Defendant nos.1 to 3, the trial Court has rejected the Exh. "5" application.

5. Considered the submissions and perused the papers with the assistance of the learned counsel for the Petitioner.

6. Trial Court has considered the admitted facts as regards the execution of the sale deed and the mutation entries in favour of the defendant nos.1 to 3. The trial Court further observed that as regards the suit property, the defendant nos.1 to 3 had sold the suit property to Vinod Ananta Dhumal in the year 2016 and that the defendant no.4 had consented to the said sale deed and defendant nos.1 to 3 had delivered the possession to said Vinod Dhumal. Upon

consideration of the mutation entries, the trial Court observed that the names of the defendant nos.1 to 3 are recorded and therefore, came to a *prima facie* conclusion that the defendant nos.1 to 3 are in possession of the suit property. The Appellate Court held that the case of the plaintiff is based on unregistered development agreement dated 23rd April, 2012 and the plaintiff has not adduced any evidence to show the possession of the suit property. The Appellate Court also observed that the defendant nos.1 to 3 in their written statement has clearly mentioned that only rights of development are handed over and there is no transfer of ownership and that the possession of the property is handed over only for the purpose of development.

7. If we consider the case of the plaintiff, it is stated that in the year 2012, the possession has been handed over to the plaintiff. If the possession was handed over to the plaintiff, there would be atleast some documentary evidence, which could be produced on record to indicate the possession. Perusal of the material on record does not disclose any material produced to *prima facie* show the possession. The plaintiff seeks to rely on the development agreement which as noted by the trial Court is an unregistered agreement dated 23rd April, 2012. On the other hand, upon the

death of Dilip Bhujbal, the defendant nos.1 to 3 had mutated their names in the revenue record. There is no dispute that the mutation has been effected and it is not demonstrated that there was any challenge to the mutation entries, which are produced on record for the year 2011 to 2012 and 2015 to 2016. As the revenue records were produced on record it was incumbent on plaintiff to demonstrate that although the mutation was in the name of defendant nos.1 to 3 the possession is with the plaintiff by virtue of the development agreement.

9. Considering that the case of the plaintiff does not satisfy the test of prima facie, case, the concurrent findings cannot be faulted with. As there is no prima facie case made out, of the plaintiff being in settled possession it cannot be said that if the restraining orders were not passed, irreparable loss would be caused to the plaintiff.

10. In light of the above, there is no cause for interference in exercise of powers under Article 227 of the Constitution. Writ Petition stands dismissed.

(Sharmila U. Deshmukh, J.)