

Nikita

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

WRIT PETITION NO.8434 OF 2021

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Shukri Abdul Qadir Mohammed Saleh
and Ors.

... Petitioners

V/s.

Marta George (Widow of Shri. Nelson K.
George) and Ors.

... Respondents

Mr. Rajesh Datar i/b Mr. Rohit Joshi for the Petitioner.

Mr. Surel S. Shah. i/b Ms. Chaitrali A. Deshmukh, for
the Respondent Nos. 1 to 5.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 9, 2023

P.C.:

1. Challenge in this petition is to the order dated 4th March 2021 passed by the District Judge, Kalyan in Miscellaneous Civil Appeal No.1 of 2019 partly allowing the appeal, granting injunction against the defendants from creating third party interest in the suit properties and carrying out construction over the suit properties.

2. The respondents are original plaintiffs who filed suit for declaration that they are owners, occupiers, possessors of the suit properties and further declaration that the conveyance executed in favour of the plaintiffs described in paragraphs 10, 11 and 13 be

declared as null and void and restraining the defendants from creating third party rights over the suit property. The respondents filed application for temporary injunction. Trial Court rejected the application, however, in my opinion, in an appeal, the Appellate Court partly allowed the appeal.

3. The learned advocate for the petitioner submitted that the defendant No.1 is called as Nelson George and he executed conveyance in favour of the predecessor of the petitioners. Petitioner being bona fide purchaser for value without notice are entitled to protection.

4. Per contra, learned advocate for the respondents submitted that the predecessor-in-title of the plaintiff (Nelson K. George) though died in the year 2007, conveyance in question are executed in 2008, 2009, and 2010. The conveyance being void, no limitation applies. According to him, therefore, to maintain the status of the property and title the Appellate Court has granted order of injunction.

5. On prima facie perusal of the material on record, it appears that the Trial Court needs to be granted opportunity to allow the parties at the time of hearing of the suit to decide whether predecessor-in-title of the plaintiff had executed conveyance in question or whether defendant No.1 had authority to execute conveyance in favour of predecessor-in-title of the petitioner. It appears that there is serious dispute about the execution of conveyance as Nelson K. George died in 2007 and conveyance are executed in 2008 to 2010. In such a situation, in my opinion, the

Lower Appellate Court has rightly granted order of injunction restraining defendants from creating third party rights. In so far as the order restraining defendants from changing nature of the suit property to the detriment of the plaintiffs is concerned, *petitioner needs to be permitted to carryout construction as stated in paragraph 8 and 9 of the additional affidavit filed by the petitioners. The petitioner needs to carry out construction as specified in paragraph No.8 and 9 of the additional additional affidavit dated 27 June 2023.*

6. Except such permission as per paragraph 8 and 9 of the additional affidavit, no interference in the impugned order is necessary.

7. The writ petition is dismissed.

8. Considering the facts of the case, the Trial Court shall decide the suit as expeditiously as possible and in in any case within one year from today.

9. It is clarified that the construction carried out as per paragraphs 8 and 9 shall be at the risk of the petitioner and the petitioner shall not claim equities based on such construction/repairs.

(AMIT BORKAR, J.)

Note:- This order is modified as per order dated 16th October 2023. Corrections are shown in italicize.