



Harish

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12968 OF 2022

Chandan Mohan Mathrani

...Petitioner

Versus

Sheela Mohan Mathrani & Anr.

...Respondents

Dr. Abhinav Chandrachud i/b Mr. Yogesh Patil for the Petitioner.

Mr. Jaydeep Deo for the Respondents.

CORAM : SHARMILA U. DESHMUKH, J.

RESERVED ON : AUGUST 04, 2023

PRONOUNCED ON : AUGUST 28, 2023

P. C. :

1. The Petition questions the order dated 10th August, 2022 passed below Exhibit -62 in Regular Civil Suit No. 223 of 2018 rejecting the Petitioner's Application seeking permission to carry out redevelopment of the suit property in accordance with the sanctioned layout.

2. The application below Exhibit- 62 came to be filed in Regular Civil Suit instituted by the Respondent No. 1, who is the mother of the Petitioner, against the Petitioner and one Sind Co-operative Housing Society Ltd seeking *inter alia* a declaration that the Power of Attorney dated 18th January, 2018 and the registered Gift Deed dated 19th January, 2018 executed fraudulently in respect of the suit premises is null and void

and be cancelled, revoked and not binding on the Respondent no 1. For the sake of convenience, the parties are referred by their status before the Trial Court.

3. The suit property is described as plot of land bearing plot No. 547 admeasuring 673.08 sq. mtrs. along with construction i.e. bungalow standing thereon admeasuring about 3,500 sq. ft. in the Defendant No 2 Society situated within the limits of Pune Municipal Corporation. The case of the Plaintiff is that, the Plaintiff is the owner of the suit property holding leasehold rights in the plot of land with share certificate standing in her name. The Defendant No 1-her son is owner of substantial properties and is residing separately since more than 25 years.

4. It is pleaded that taking advantage of the absence of her daughter, the Defendant No. 1 on 18th January, 2018 at about 4.00 p.m. came to the suit premises and took the Plaintiff and her husband to the Registrar's office at Haveli on the pretext of executing certain documents of his some property. It is pleaded that there was no electricity supply in the Registrar's office and Defendant No. 1 presented certain papers for signature of both the Plaintiff as well as her husband. It is pleaded that as the Plaintiff and her husband were rushed by the Defendant No 1, the Plaintiff left the house without spectacles and thus, the Plaintiff could not read the contents of the documents on which her son asked them to sign

and the documents being in English, the contents could not be understood as the Plaintiff was not well conversant with English language. It is pleaded that the Defendant No. 1 was pressurizing and coercing by misrepresentation the Plaintiff to sign the document and not to create any scene before the officer and as such, the signature and thumb impression were obtained. It is pleaded that after execution of the documents no copies were given to the Plaintiff and on 20th January, 2018, the Plaintiff was informed by the Defendant No. 2 society that Defendant No. 1 had produced a Gift Deed of the property in his favour. The Plaintiff by her letter dated 23rd January, 2028 lodged a complaint with Chaturshringi Police Station, Pune and the suit was filed on 5th February, 2018.

5. On 5th February, 2018, an application was filed by the Plaintiff seeking injunction against Defendant No 2 from effecting transfer of the suit property and against Defendant No 1 from disturbing the Plaintiff's ownership and possession rights. On 1st March, 2018 an undertaking came to be filed by the Defendant No. 1 stating that he does not want his parents to leave the suit property and neither does he intend to disturb in any manner their stay/possession/enjoyment of the suit property for their life time and he does not wish to alienate the suit property.

6. The Trial Court by its order dated 25th April, 2018 rejected the application below Exhibit "5" as against which Misc. Civil Appeal No 125

of 2020 was filed which was allowed vide order dated 9th January, 2023 as against which the connected petition is filed.

7. The contention of Defendant No 1 in the written statement was that the Defendant No 1 was declared as member of Defendant No 2 Society by order dated 31st August, 2018 passed by Deputy Registrar of Co-operative Societies and the records were amended. The name of Defendant No 1 has been mutated in the assessment records and MSEDCL. It was pleaded that the daughter of the Plaintiff was instigating his parents with a view to grab the properties of his parents. It was contended that the photographs which are annexed to the power of attorney clearly shows that the document was executed electronically at 7.30 p.m. and the photo taken at that time was the latest one wherein the Plaintiff was wearing the glasses and that there is no fraud and coercion.

8. On 23rd June, 2020, the Plaintiff filed an application below Exhibit "43" seeking to restrain the Defendant No. 1 from disturbing the Plaintiff's possession and and from entering into the suit property. Vide order dated 8th September, 2020, the Trial Court rejected the Application as against which there was no challenge.

9. On 19th November, 2021, an application was filed by the Defendant No. 1 below Exhibit "62" seeking permission to carry out the re-development of the suit property in accordance with the sanctioned

layout under such conditions thought fit by the Court. It was stated that the construction standing on the suit property is in dilapidated condition and 50 years old and needs construction. In support, reliance was placed upon the architect's certificate that the foundation and other construction of the said bungalow has weakened due to construction age, and the same is required to be demolished for new construction. It was contended that there was plan sanctioned by the Pune Municipal Corporation and undertaking was given that the entire construction will be completed within two years, all the expenses for the reconstruction shall be borne by the present Defendant No. 1 and that the Defendant No. 1 shall make available on rent a ground floor premises to the Plaintiff for the entire period of construction if the Plaintiff wishes to come to Pune and after construction is complete, the Defendant will at his own cost shift the Plaintiff in the bungalow.

10. The Plaintiff in her reply contended that the suit property was constructed in the year 1970 and that the foundation of the bungalow was very strong and it is not declared as dilapidated. It was contended that the bungalow was an independent bungalow and there was no road and footpath around it and there are no endangering of the life of the passersby. It was contended that the Plaintiff and her husband were residing at Bombay with their daughter, as due to Covid- 19 pandemic it was not feasible for the Plaintiff and her husband to stay in the suit

property.

11. By the impugned order dated 10th August, 2022, the Defendant No. 1's application came to be rejected giving rise to the present Petition.

12. Heard Dr. Abhinav Chandrachud, learned counsel appearing for the Petitioner and Mr. Jaydeep Deo, learned counsel appearing for the Respondent.

13. Dr. Chandrachud, learned counsel for the Defendant No. 1-Petitioner at the outset pointed out the Mediator's report and submitted that the mediation report makes it clear that it is the daughter of the Plaintiff who is instigating the Plaintiff. He urged this Court to interview the Plaintiff in chamber to ascertain the factual position. As regards the merits of the matter, he submits that in view of the undertaking dated 1st March, 2018, there was no impediment to permit the re-development of the suit property. He relies upon the conclusions of the structural audit report that the structure is unsafe for which it is intended. He has further invited the attention of this Court to the affidavit-in-reply to the Application filed by the Plaintiff in which it is admitted that the Plaintiff and her husband are residing in Bombay. As regards the Plaintiff's structural audit report, he would submit that there is apparent error as the construction has been stated to be 25 years old whereas it was 50 years old. He would further point out the disclaimer in the audit report

produced by the Plaintiff that the certificate issued did not guarantee the stability of the construction and that the report has been prepared on the basis of certain assurance given by the owner. He would further submit that the Defendant No. 1 has shown his bonafides in seeking permission, which according to him was not required as the property stands transferred in the name of the Defendant No. 1.

14. *Per contra*, Mr. Deo, learned counsel for the Respondent-Plaintiff submits that the manner in which the gift deed has been executed strongly points to the fraud practiced upon the Plaintiff. He would point out the conclusions of the Plaintiff's architects's report which shows that by carrying out the repairs, the building can be kept in structurally sound condition and that there is no necessity for demolition. He submits that the whole purpose is to demolish the suit property which rightfully belongs to the Petitioner and the demolition cannot be permitted at the interim stage.

15. Considered the submissions and perused the papers with the assistance of learned counsels appearing for the parties.

16. The case of the Plaintiff is that the Gift deed has been executed on the basis of a Power of Attorney and both these documents have been executed fraudulently and are null and void. The sequence of events in the present case is that on 18th January, 2018 the Power of Attorney was

executed and on 19th January, 2018 the Gift deed was executed on the basis of Power of Attorney, on 20th January, 2018 the Defendant No. 1 sought to change the records of Defendant No. 2 Society in his name and on 23rd January, 2018 the Plaintiff filed the police complaint and the instant suit was filed on 5th February, 2018. The assertion of the Plaintiff is that the Plaintiff has been fraudulently coerced to execute the Power of Attorney on the basis of which the Gift deed was executed and as such, both the documents are fraudulently executed and null and void. Presently, this Court is concerned with the order of the trial court rejecting the application seeking re-development of the bungalow on the ground that the bungalow is in dilapidated condition and needs reconstruction. Apparently, even before filing of the application on 19th November, 2021, the Defendant No. 1 has got the plans sanctioned by the Pune Municipal Corporation. Despite being aware of the challenge to the Gift Deed raised by the Plaintiff by the instant suit, the Defendant No. 1 filed an application before the Deputy Registrar under Section 22 of the Maharashtra Co-operative Societies Act, 1960 and vide order dated 31st August, 2018 was granted membership of Defendant No. 2 Society. In the proceedings before the Deputy Registrar, the Plaintiff was not made a party. This conduct on part of the Defendant No. 1 prima facie creates a doubt about the intention of the Defendant No. 1.

17. There is a dispute pending between the Plaintiff and the Defendant

No. 1 as regards the execution of the Gift Deed as to whether the Gift Deed is a result of fraud and thus void and is an issue which will be adjudicated after the evidence is led. At the interim stage, the Defendant No. 1 seeks to change the nature of the suit property by demolishing the bungalow and constructing a new structure. The suit property is the subject matter of the Gift deed and during the pendency of the proceedings, it is necessary that the Court protects the status quo existing on date of suit and it is only in exceptional circumstances when irreparable damage is feared that the status quo may be permitted to be changed. The reason seeking re-development is that the bungalow is in dilapidated condition by relying on structural audit report, which has been opposed by the Plaintiff by producing her structural audit report. Both these reports are conflicting reports. The certificate produced by the Defendant No. 1 concludes that the structure is unsafe for which it is intended, whereas, the structural stability report produced on record by the Plaintiff shows that minor repairs are sufficient as the structure is in sound condition. At the interim stage, the Court cannot test the veracity of the conflicting reports. The fact remains that both these reports have been obtained by the parties from private structural consultants and there was no government approved architect appointed to conduct the structural audit of the building. However, the photographs produced on record by the learned Counsel for Plaintiff do not *prima facie* indicate that

the bungalow is in such a dilapidated condition that demolition and reconstruction is the only immediate course required to be adopted.

18. The contention of learned counsel for the Defendant No. 1 is that upon execution of the Gift deed, the Defendant No. 1 has become the owner and only to show his bonafide, the application has been filed. It needs to be noted that the Plaintiff has raised an issue of fraud which has not attained finality. Till such time, the nature of suit property cannot be permitted to be changed. In my opinion, the Defendant No. 1 has not been able to demonstrate such irreparable damage which will persuade the Court to permit the change in the nature of the suit property. Another aspect which supports the rejection of the application is that the Defendant No. 1 is not residing in the suit property and there is no immediate need for residence of the Defendant No. 1 which will prompt consideration of the re-development application in favour of the Defendant No 1. The Trial Court while rejecting the application has rightly considered that if the Plaintiff succeeds in the suit, she will not get the same property which is existing as on today.

19. The Trial Court considered the conflicting reports produced by the Plaintiff and the Defendant as regards the structural condition of the bungalow observed that it appears that the structure is old one, however, there is no material to show that the present condition is such that it can

collapse at any time and it is a danger to the neighboring premises and public at large. The Trial Court observed that granting permission of re-development would amount to destroying the suit property.

20. Much emphasis has been laid by the learned counsel appearing for the Petitioner on the point that it is the daughter who is instigating the Plaintiff and request was made to interview the Plaintiff in the chambers so as to ascertain her wish. This Court has declined to interview the Plaintiff for the reason that the parties were sent for mediation to a former Judge of this Court who has submitted a report that the mediation has failed. I have not considered the contents of the mediation report which refers to the conduct of the daughter of the Plaintiff, for the reason that, mediation proceedings are totally confidential and if the happenings in the mediation proceedings are disclosed, it will destroy the aspect of confidentiality which instills trust in the mind of the litigants that they are free to express their opinions in mediation proceedings as the same will not be reflected in the report and will not prejudice their case, in event the mediation fails.

21. In my opinion, if the submission of the Defendant No. 1 is that the Plaintiff has executed the Gift deed of her volition and does not wish to proceed against the Defendant No. 1, it is for the Defendant No. 1 to mend the bridges with his mother to ensure that the matter is amicably

settled. I do not find any fruitful purpose in interviewing the mother and as such, have proceeded to determine the matter on merits.

22. Having regard to the above discussion, at this stage, it will be necessary to preserve the suit property till the hearing and final disposal of the proceedings and there is no such irreparable damage demonstrated so as to permit redevelopment of the bungalow.

23. In that view of the matter, there is no infirmity in the order passed by the Trial Court rejecting the application seeking demolition of the bungalow situated in the suit property.

24. Petition fails and stands dismissed.

(SHARMILA U. DESHMUKH, J.)