

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 993 OF 2023
WITH
INTERIM APPLICATION NO. 17790 OF 2023

Vasanti Raghunath Patil

...Appellant

V/s.

Suresh Jagannath Patil and Ors

...Respondents

Mr. Sandesh Patil i/by. Mr. Pavan Patil and Mr. Nitin Jagtap, for the Appellant.

Mr. R.D. Suryawanshi i/by. Mr. Suraj N. Naik, for Respondent No.13.

CORAM : SANDEEP V. MARNE, J.

DATED : 8 DECEMBER 2023.

P.C. :

1) The challenge in the present Appeal is to the Order dated 31 October 2023 passed by the 2nd Joint Civil Judge, Senior Division, Thane rejecting Plaintiff's application for temporary *injunction* at Exhibits-5 and 48.

2) I have heard Mr. Patil, the learned counsel appearing for the Appellant and Mr. Suryawanshi, the learned counsel appearing for Respondent No.13.

3) Plaintiff-Vasanti is the daughter of Dadu who passed away on 9 May 1978 leaving behind his wife, Hirubai, son-Chandrakant and daughter-Vasanti. It is Plaintiff's case that the suit property is a joint family property in which she has a share. She has relied upon a mutation entry executed in the year 1980, after the death of Dadu by which her name came to be mutated in the revenue records in respect of the suit property.

4) It appears that the suit property came to be sold and transferred by father -Dadu and brother-Chandrakant in favour of Defendant Nos.1 to 7 on 20 June 1973. Appellant apparently did not raise any objection to such a sale. On 2 February 2018, Defendant Nos. 1 to 7 have executed the Development Agreement in favour of Defendant No.13 in respect of the suit property. In pursuance of the Development Agreement so executed, the Municipal Corporation has issued Commencement Certificate in favour of Defendant No.13 on 15 November 2019. Defendant No.1 has commenced and progressed substantial construction at the suit property. At such a belated stage, the Plaintiff has instituted Special Civil Suit No.81 of 2023 seeking various

declaratory and injunctory reliefs in respect of the suit property. Curiously in the plaint itself, Plaintiff has admitted that in addition to the suit property, there are some other properties owned by the joint family which are described as 'other properties' which do not form subject matter of the suit.

5) Considering the events that have occurred since the year 1973 and silence on the part of the Plaintiff in not taking timely action in respect of the Sale-deed executed on 20 June 1973, the Development Agreement executed on 2 February 2018 and delay in seeking restraint order against Defendant No.13 from carrying out any construction in pursuance of the Commencement Certificate issued on 15 November 2019, I am of the view that no case was made out by the Plaintiff for grant of any interim injunction to restrain Defendant No.13 from either creating third party rights in the suit property or from carrying out any construction thereon. No error therefore can be traced in the order passed by the Trial Court. Also of relevance is the fact that in addition to the suit property, there are other joint family properties. In the event, the Plaintiff succeeds in the suit in establishing a share in the suit property, such share can always be adjusted in other joint family properties if and when the Plaintiff incorporates the said properties either in Special Civil Suit No.81 of 2023 or files a separate suit in respect of those properties. As of now, no case is made out by the Plaintiff for grant of any injunctive relief against Defendant No.13 in

respect of the suit property. The Trial Court has rightly rejected the application for temporary injunction. Appeal being devoid of merits is **dismissed** without any orders as to costs.

6) With dismissal of the Appeal, Interim Application does not survive. The same also stands disposed of.

SANDEEP V. MARNE, J.

**NEETA
SHAILESH
SAWANT**

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