

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 1605 OF 2023

Vandana Anandrao Ambekar __ Vs. __ Nandabai Narendra Bodkhe

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. K.D.Shukla, Advocate for petitioner

CORAM : AVINASH G. GHAROTE, J.

DATE : 15/03/2023

1] Heard Mr. Shukla, learned counsel for the petitioner.

2] The petition challenges the judgment dated 5.9.2022 passed by the learned Appellate Court, whereby the order below Exh.5 passed by the learned trial Court in favour of the petitioner/plaintiff has been set aside by allowing the appeal.

3] It is contended that though the learned trial Court has rendered a prima facie finding of the petitioner being in possession, the same has been wrongly upset by the learned Appellate Court, without considering the documents on record and the plea that the sale deed dated 11.4.2001 was a fraudulent document.

4] The documents on record which are tendered across the bar by a pursis dated 15.3.2023 indicate that the petitioner who is the original plaintiff claims to be in possession of the plot no.55 in the lay-out on the land of field Survey no. 73/1 C, Mouza - Manewada, claimed to have been executed by one Chintaman Lahanuji Nandanwar, in favour of the petitioner/plaintiff. The said document indicates that the total consideration having been received by Chintaman Lahanuji Nandanwar, the possession thereof was delivered to the petitioner/plaintiff. On the date of the agreement of sale itself, the power of attorney was executed by Chintaman Lahanuji Nandanwar in favour of the petitioner/plaintiff thereby authorizing her to execute and register the sale deed in favour of any prospective purchaser. It is on the strength of this power of attorney, that the petitioner is claimed to have executed a registered deed of sale on 11.4.2001 in favour of the respondent, who is her sister-in-law. In pursuance to this sale deed, the respondent has mutated her name in the records of the City Survey, has also applied to the Nagpur Improvement Trust for regularization of the plot, paid the regularization charges in pursuance to which the regularization letter was issued in her favour on 19.8.2005. A building plan

was also submitted, which came to be sanctioned by the NIT on 19.8.2005. The name of the respondent also stands mutated in the record of Nagpur Municipal Corporation and the municipal taxes are being paid by her. The complaint made by the petitioner/plaintiff to the police authority on 31.7.2018 also indicates that the respondent has erected a board on plot no. 55 of her name.

5] The deed of sale dated 11.4.2001 is a registered document and carries a presumption in law. The document has a recital of the possession of plot no. 55 having been delivered to the respondent/defendant. The deed of sale indicates that it has been executed by the present petitioner as the power of attorney holder of Chintaman Lahanuji Nandanwar. Merely because the petitioner claims to sign in English and on the sale deed appears a signature in Marathi, that by itself cannot be a ground to hold that it is a fraudulent document. The veracity of the position will have to be tested on the basis of evidence which may be laid during the course of the trial. The documents on record demonstrate that consequent to the sale deed dated 11.4.2001, the respondent has exercised a right of ownership over the suit plot.

6] The learned trial Court in para 13 of his order has referred to the video CD. It only indicates that some people were gathered on the spot and there was dispute going on about the possession and some persons were removing the said board of the respondent from the plot and the defendant was installing her board. This clearly would not indicate that it is the plaintiff who is in possession of the suit plot in question, more so in view of the averments in the sale deed, which has a presumptive value and the subsequent documents as indicated above, which indicate that the respondent has exercised right of ownership over the same. I do not see any reason to interfere in the judgment of the learned Appellate Court, which considers the position in its entirety based upon the documents on record. The petition is therefore without any merit and the same is dismissed. No costs.

JUDGE

Rvjalit