



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2917 OF 2024

PUSHPABAI ASHOK SONOWANE

VERSUS

NILKANTH KASHIRAM PATIL DIED THROUGH LRS MEERABAI NILKANTH
PATIL AND OTHERS

Mr. B. S. Doifode, Advocate for the petitioner

Mr. Girish Rane, Advocate for respondent Nos.1.1 to 1.6, 2.1 to 2.5, 3 to 5.

CORAM : R. M. JOSHI, J.

DATE : 12th JULY, 2024

PER COURT :-

1. This petition takes exception to the order dated 18/01/2024 passed in M.C.A. No. 72/2023 by District Judge-3 & Addl. Sessions Judge, Jalgaon whereby the order passed below Exhibit 90 in Regular Civil Suit No. 102 of 2015 is quashed and set aside.

2. The petitioner is plaintiff who has filed suit for specific performance of the contract on the basis of agreement to sale dated 03/04/2014. It is contended that prior thereto even in the year 1986 an agreement to sale was executed by the mother of the defendants in favour of father of the plaintiff and at that time the possession of the suit property was handed over to him. It is further contended that since 1986 initially her father and later on she is in possession of the suit property.

It is further case of the plaintiff that the said possession can be seen from the revenue entries and the order passed by Tahasildar showing the name of plaintiff as well as her father in the column of cultivation of the land.

3. Defendants opposed the said suit by filing written statement denying the validity of the agreement to sale so also possession of the plaintiff over the suit property.

4. During the pendency of suit application Exhibit 90 came to be filed by the plaintiff seeking injunction against defendants restraining them from causing obstruction to the peaceful possession of the plaintiff over the suit property. This application was allowed by order dated 20/07/2023. This order came to be challenged before the District Court in MCA No. 72/2023 successfully. Hence, this petition.

5. Learned counsel for the petitioner submits that the revenue record more than sufficiently demonstrates that initially father of the plaintiff and after his demise plaintiff is in possession of suit property. It is his submission that it was not open for the District Court to discard the said evidence as the revenue entries have prima facie evidentiary value unless proved contrary. It is his submission that having regard to the fact

that on the basis of this evidence the plaintiff is having possession of the suit property and that the order of injunction passed by the learned Trial Court deserves to be restored.

6. Learned counsel for the defendants/respondents have opposed the said contention on the ground that plaintiff in her evidence has admitted the execution of agreement dated 03/04/2014 and contents therein. It is also pointed out that the evidence plaintiff has been duly considered by the District Court while reversing the order passed by the Trial Court.

7. There is no dispute about the fact that the plaintiff has examined herself before the Trial Court in examination in chief itself she has admitted the contents of agreement dated 03/04/2014. A bare perusal of the said agreement shows that the possession of the suit property is said to be with defendants. Pertinently such reference is not isolated but appear in clause Nos.2 and 3. *Prima facie* there is admission of plaintiff on oath about contents of the document of agreement to sale dated 03/04/2014 to be true and correct. Moreover, there is no explanation given even in the plaint about the said recital indicating possession of the defendants being incorrect or not binding on her. Needless to say that admission of any party is best evidence to prove

any fact. This admission is not stray but plaintiff has candidly admitted the contents of the documents which indicate possession of the suit property with defendants. In such circumstances this Court finds no reason to cause interference in the impugned order of setting aside interim injunction granted by the Trial Court. Hence, petition stands dismissed.

(R. M. JOSHI, J.)

ssp