



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

912 WRIT PETITION NO. 3508 OF 2024

ANANDA TULASIRAM JADHAV

VERSUS

VARSHA ACHYUTRAO BAN AND ANOTHER

...

Advocate for the Petitioner : Mr. Suryawanshi Govind G.

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CORAM : ARUN R. PEDNEKER, J.

DATE : 05th APRIL, 2024

PER COURT:

1. Heard.
2. The petitioner challenges the order passed by the appellate court granting injunction against the petitioner / defendant restraining the defendant from interfering with the suit property. It is the case of the petitioner that the trial court has refused injunction and the appellate court ought not to have interfered with the order of the trial court.
3. On perusal of the order of the trial court, at para 13, the trial court observed as under:-

“13. When the documentary evidence is perused by considering the above legal provisions in my view considering the nature of suit, as the grant of injunction will only create hardship and may lead to multiplicity of proceedings, it will be in the interest of justice to direct the

parties to maintain status-quo. As the fact of ownership and possession can be ascertained only after evidence not at this preliminary stage.”

The trial court has not rendered any prima facie finding on the possession of the parties and has directed the parties to maintain the status quo.

4. The list of documents produced by the plaintiff and the defendant is at para 9 and 10 of the trial court's judgment, showing the title and possession of the plaintiff. The defendant has only filed the copy of photograph. List of documents at para no.9 and 10, in the order dated 09.08.2023, filed by the plaintiff and the defendant are quoted below :-

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Document filed on Record

9. To substantiate her stand the plaintiff below List of document at Exh.7 has filed on record the following documents ;

1) Copy of Sale deed executed by Chandrakat Narayan Kalyankar and Sahebrao Ganpatrao Kalyankar in favour of plaintiff, bearing No.3399/1998 dated 14-10-1998,

2) Copy of Sale deed executed by Rajkumar Nandlal Patni in favour of Chandrakant and Sahebrao, bearing No.2141/1995 dated 07-08-1995,

3) Copy of Sale deed executed by Venkat Irwanta Sidnod in favour of Rajkumar Nandlal Patni, bearing No.459/1989 dated 13-01-1989,

4) Copy of Sale deed executed by Madhav Irwanta Sidnod in favour of Venkatrao Irwanta Sidnod, bearing No.336/1988 dated 22- 04-1988,

5) Copy of partition deed executed between Madhav Irwanta and others dated 23-03-1986,

- 6) *Copy of Sale deed which was fraudulently executed by Prayagbai and others on behalf of G. P. A. defendant bearing No.827/1989,*
- 7) *Copy of Gunthewari granted by NWCMC, Nanded in favour of the plaintiff dated 01-08-2011,*
- 8) *Copy of receipt issue by NWCMC, Nanded in favour of the plaintiff regarding payment of Gunthewari charges dated 12-07-2011,*
- 9) *Copy of plaint in RCS No.116/1998 dated 19-07-2007,*
- 10) *Copy of compromise in RCS No.116/1998 Exh.77 dated 19-07-2007,*
- 11) *Copy of plaint in RCS No.116/1998 Exh.81 dated 19-07-2007,*
- 12) *Copy of tax receipt issued by the NWCMC, Nanded and*
- 13) *Copy of N.A. in respect of Plot No.107,108, & 109.*

The plaintiff below List of document at Exh.24 has filed on record the following documents :

- 1) *Copy of Photograph.*

Document filed on Record By the Defendant

11. *To substantiate his stand the defendant below List of document at Exh.31 has filed on record the following documents :*

- 1) *Copy of Photograph.”*

5. The appellate court on the basis of the documents filed by the plaintiff by order dated 25.01.2024, at para 13, observed as under:-

“13...The sale deeds bearing Nos. 2141/1995, 336/1988 and 459/1989 are regarding the aforesaid transactions took place between the previous owners of the suit plot. A perusal of these documents reveal that there has been continuous and uninterrupted transfer of the suit plot. The plaintiff has

also produced Gunthewari Certificate / Regularization Certificate dated 01-08-2011 issued in her favour by the Municipal Corporation, Nanded regularizing the layout prepared in respect of the suit plot which prima-facie reveals her possession over the suit plot. Defendants have not challenged any of these documents. Defendant No. 1 has not even filed her written statement disputing the contentions of the plaintiff. She has alienated the suit plot in favor of defendant No. 2 pending the suit. ...”

6. The appellate court has rendered a finding that the plaintiff is in possession of the property and that the document reveals that there is continuous and uninterrupted transfer of the suit property ultimately coming in possession of the petitioner. The defendant no.2, who has purchased the property during the pendency of the suit has not produced any document to show that the defendant no.2 is in possession of the suit property. In view of the same, the injunction order is passed.

7. I have perused the material considered in the order of the appellate court. The trial court has failed to give prima-facie finding on possession, although, there is material available in that regard and order of status quo by the trial court without finding of possession would only create confusion. The appellate court has rendered a prima facie finding on possession based on sale deed of the suit property and regularisation of the lay-out by the municipal corporation and, as such, granted injunction against the defendant from interfering in the possession of the suit property of the plaintiff.

8. I see no error in the order passed by the appellate court, as such, the present petition is dismissed.

[ARUN R. PEDNEKER, J.]

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