



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3118 OF 2023

Dhruv Sunil Kale Minor And Others

VERSUS

Sunil Kashinath Kale And Others

- Mr. S. S. Randive, Advocate for the Petitioners
- Mr. Y. L. Bidve, Advocate for the Respondent No. 1
- Mr. V. N. Shinde h/f Mr. G. K. Naik Thigle, Advocate for Respondent Nos. 2 to 4
- Mr. D. P. Palodkar h/f Mr. Y. K. Bobade, Advocate for Respondent Nos. 5 to 8

CORAM : R.M. JOSHI, J

DATE : NOVEMBER 25, 2024

PER COURT :

1. This Petition takes exception to order dated 04.11.2020 passed below Exh. 5 in RCS No. 401/2020 whereby application filed by the Plaintiffs/Petitioners seeking injunction against Defendants from creating third party interest in the suit property came to be rejected. Misc. Civil Appeal bearing No. 52/2020 filed against the said order met same fate on 12.08.2022.

2. Petitioners are Plaintiffs in the above suit. Suit is filed by them with the averments that the suit property is ancestral property which was inherited by their father from Kashinathrao. It is further contended

that without any right to execute sale deed, father of the Petitioner Nos. 1 and 2 and husband of Petitioner No. 3 executed gift deed in favour of his sister. It is contended that in fact the said gift deed was executed against a transaction of money lending. It is further claimed that though gift deed was executed, possession of the property was not handed over to the donee and hence, it is not a complete gift. In this backdrop, injunction is sought by the Petitioners against the Defendants with averments that the Defendant Nos. 2 to 4 are likely to create third party interest in the suit property. These Defendants opposed the suit with contention that the gift is executed by Sunil in favour of Defendant No. 4. It is claimed that gift is completed and possession of the gifted property is with these Defendants.

3. Learned Counsel for the Petitioners submit that the Trial Court has committed error in rejecting the application Exh. 5 with observations that there is nothing on record to indicate that the Defendants are likely to create third party interest in the suit property, as the said apprehension of the Plaintiffs

has turned true with the Defendants having created third party interest in the suit property in favour of the purchaser. He further submits that subsequent to the order passed by the Trial Court, there is a panchnama done by Talathi in respect of suit property which shows that the Plaintiffs are in possession of the suit property and not the Defendants.

4. Learned Counsel for contesting Respondents opposed the said contention by drawing attention of the Court to the registered gift deed which shows that the possession of the suit property was handed over by Sunil to his elder sister Anuradhabai. Thus, it is contended that by virtue of registered document of gift, right, title and interest in the suit property came to be transferred in her favour and as such, no injunction could be granted against Defendants.

5. At the outset, this Court would like to deal with the contention of the learned Counsel for the Petitioners that subsequent to the passing of the impugned order, panchnama is carried out by Revenue Authorities which according to him indicates possession of the Plaintiffs over the suit property. Admittedly,

this evidence was never placed before the learned Trial Court. This Court, in exercise of writ jurisdiction, does not wish to record any finding of fact afresh. As far as the materials before the Trial Court at the time of decision of Exh. 5 is concerned, there was a registered gift deed executed by Sunil in favour of his sister Anuradhabai with recital of handing over of possession of suit property to her. As such, on the face of it, with execution of this document the gift is complete and right, title and interest *prima facie* stood transferred in her favour.

6. Apart from this, there is absolutely no material on record to indicate that the Plaintiffs are in possession of the suit property. It is pertinent to note that the gift deed is executed in the year 2010 and the said gift deed is not revoked by executor Sunil for a period of about 12 years. This Court is informed that now Sunil has filed suit against his sister seeking revocation of the said document. Suffice it to say that before the Trial Court there was a registered document indicating transfer of the subject property in favour of the Defendants on the basis of valid

registered document. The possession also can be said to have been transferred from the said document. Unless contrary is proved, there is no reason for the Court to discard the recitals of the said document.

7. As far as the contention of the learned Counsel for the Petitioners about multiplications of the transaction is concerned, as rightly observed by the learned Trial Court that Section 52 of the Transfer of Property Act sufficiently takes care of the transaction pendente lite.

8. Having regard to these facts, this Court finds no perversity in the impugned orders in order to cause interference therein. In the result, Petition stands dismissed.

9. At this stage, learned Counsel for the Petitioners seek extension of the order dated 17.03.2023 for further period of four weeks.

10. Learned Counsels for Respondents opposed the said request on the ground that the said order was not passed on merit but passed after hearing Petitioners only.

11. Be that as it may, the order passed by this Court is in force for about 1 $\frac{1}{2}$ years, this Court, therefore, finds no reason not to extend the same for further period of four weeks. Hence, order dated 17.03.2023 is extended for further period of four weeks from today.

(R.M. JOSHI, J.)