



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5274 OF 2024

Surekha Shivsharam Sajjanshetty

VERSUS

Somshekar Shivraj Appa Chaudhary
And Others

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Mr. J. R. Patil, Advocate for the Petitioner

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CORAM : R.M. JOSHI, J

DATE : JUNE 10, 2024

PER COURT :

1. Heard.

2. This Petition takes exception to the order dated 12.03.2024 passed in Misc. Civil Appeal No. 17/2023 by District Judge - 1, Ahmedpur, District Latur setting aside order dated 09.06.2023 passed below Exh. 5 in Special C.S. No. 02/2023 by CJSD, Ahmedpur granting injunction against defendants.

3. Learned Counsel for the Petitioner/Orig. Plaintiff submits that the Petitioner has raised a specific plea in the plaint with regard to the obtainment of decree in RCS No. 357/2018 by playing fraud. It is his further contention that the Petitioner/Plaintiff has also pleaded about the

attempts being made by the defendant no. 1 to alienate plot no. 19 in land gut no. 41/4 to defendant no. 7 through a registered sale deed without legal necessity. It is his contention that these issues are required to be considered by the learned trial Court and hence, during the pendency of the suit the injunction was rightly granted.

4. Perusal of the record indicates that the Petitioner/Plaintiff did not challenge the decree passed in RCS No. 357/2018. If it is his contention that the said decree is obtained by playing fraud, it was incumbent on the part of the Petitioner to challenge the said compromise decree before that Court. It is not sufficient for the Petitioner to simply take pleadings to that effect in the present suit. Pertinently, the prayer clauses of the suit disclose that the Petitioner is only seeking possession of the suit properties and declaration in respect of the sale deed executed by the defendant nos. 1 and 2 in favour of defendant nos. 3 to 15.

5. In the light of the aforestated facts, the question before the Appellate Court was as to whether

there was a case made out by the plaintiff for grant of any injunction. Perusal of the impugned order shows that the Appellate Court has rightly taken into consideration the fact that the Plaintiff/Petitioner has not challenged the compromise decree which is sought to be assailed in the present suit. It is on this ground the compromise decree is said to bind even plaintiff. Apart from this, Appellate Court take into account averments of parties and facts appearing therefrom. The impugned order does not *de hors* record.

6. In such circumstances, no perversity is found in the impugned order for causing any interference therein. In the result, Petition stands dismissed.

(R. M. JOSHI, J.)

Malani