



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4861 OF 2024

Sau. Rina w/o Sameer Thole .. Petitioner

versus

Mr. Kishore s/o Bhimrao Mhaske & others .. Respondents

WITH
WRIT PETITION NO. 4863 OF 2024

Sau. Rina w/o Sameer Thole .. Petitioner

versus

Mr. Pramod s/o Parasram Tandale & others .. Respondents

Mr. A. P. Bhandari, Advocate for the Petitioner.
Mr. S. V. Adwant, Advocate for Respondent Nos. 1 to 4.

CORAM : R. M. JOSHI, J.
DATE : 27th NOVEMBER, 2024.

ORDER :

1. Petitioner is Plaintiff in Regular Civil Suit No. 38/2022 and being aggrieved by judgment and order dated 28.02.2024 passed in Misc. Civil Appeal No. 72/2023 setting aside order of grant of Exhibit 5 in the said suit, has preferred these Petitions.

2. The facts which led to filing of these Petitions can be narrated in brief as under :-

. Petitioner/Plaintiff claims to be the owner of land admeasuring 83 R from Gat No. 141 of village Tisgaon, Tq. & Dist. Aurangabad. It is the case of the Plaintiff that she purchased the suit property from Anil Challani on the basis of registered sale-deed executed by him in her favour. It is claimed that at the time of the said sale transaction, the property only to the extent of 66R was in possession of the vendor and hence though the title is conveyed in respect of total 83R land, possession was given to the extent of 66R land only. It is further claimed that the vendor of the Plaintiff had got the suit land measured and map is prepared on 14.07.2013.

3. It is further claimed that Pralhadbhai Patel and three others filed Regular Civil Suit no. 921/2008 against Madanlal Challani and Sndipkumar Challani, who happened to be the predecessors in title of the Petitioner and Respondents respectively. In the said suit, relief of injunction was claimed against Defendants therein. The said suit came to be abated and was dismissed against

the predecessors of the Petitioner. The suit however came to be decreed against Sandipkumar Challani. It is claimed by Petitioner that after passing of the said decree in Regular Civil Suit No. 921/2008, Sandipkumar Challani executed registered sale-deed dated 09.09.2021 in favour of Respondents in respect of the subject property therein. It is contended by Petitioner that even at the time of effecting said sale, parties were conscious of the fact there is dispute with regard to the boundaries. It is claimed that registered sale-deed executed in favour of Respondents is with a zone certificate wherein it is mentioned that the subject land is in agricultural/no development zone. It is claimed by Petitioner that Respondents illegally dispossessed her from the suit property by destroying standing crops. Complaints made by her to police and other authorities were in vain. Petitioner, therefore, was constrained to file Regular Civil Suit No. 38/2022 before Civil Judge Junior Division, Aurangabad. An application Exhibit 5 was moved for seeking temporary injunction against Respondents herein. Petitioner has sought relief against Respondents restraining them from creating third party interest in the suit property. It is claimed that Respondents have started executing registered sale-deed in favour of various third parties by creating plots on the suit land. In these

circumstances, Exhibit 5 came to be allowed on 21.04.2023. This order was taken exception by Respondents in Misc. Civil Appeals No. 71/2023 and 72/2023. However, finally, Misc. Civil Appeal No. 72/2023 was only prosecuted. The Appellate Court, by passing the impugned judgment and order, set aside the order passed by the Trial Court below Exhibit 5 and hence these Petitions.

4. Learned counsel for Petitioner/Plaintiff submits that admittedly there are disputes between the parties with regard to the boundaries and the said dispute prevails since the time of predecessors of both Petitioner and Respondents. It is his contention that zone certificate clearly indicates that it is agricultural land and no other development activities are permissible therein. In such circumstances, Respondents' act of creating plots and selling the same to third party is contrary to the said zone certificate. On these contentions, it is his submission that the Trial Court has rightly granted injunction in favour of Plaintiff which came to be overturned erroneously by the Appellate Court.

5. Learned counsel for the Respondents supported the impugned judgment and order on the ground that the Plaintiff's

vague contentions in respect of the subject property ought not to have been considered by the Trial Court. It is also argued that there are no specific pleadings in the plaint as to how the Plaintiff has any right, title and interest in the property which was sold pursuant to the sale-deed effected by the vendor of the Respondents. It is submitted that in absence of any challenge to the title of the Respondents in respect of the subject property, there is no locus standi for the Petitioner to seek any injunction in respect of the same.

6. Prima facie perusal of the record indicates that the Petitioner had filed suit bearing Regular Civil Suit No. 38/2022 seeking possession of the land admeasuring 83 R from Gat No. 141. Injunction is also sought restraining Defendants from selling or transferring the suit land by any mode or creating charge on the suit property. Pertinently, there is no declaration sought by the Plaintiff with regard to ownership of the suit property nor any declaration is sought about the registered sale-deed executed by the vendor of the Respondents in their favour being not binding upon her. Apart from this, perusal of plaint also shows that there is vague statement made with regard to dispossession of Plaintiff by the Respondents. These vague averments become relevant in view of the fact that it is the

case of Plaintiff herself that though the sale-deed was executed in her favour in respect of the land admeasuring 83R however, the vendor of the Plaintiff was not in possession of the entire land. In such circumstances, in absence of any specific averment with regard to the lands in possession by the Plaintiff of the suit property at the hands of Defendants or in absence of any declaration being sought that she is exclusive owner of the suit property and that the Respondents/Defendants have no right, title or interest therein, it would not be open for the Petitioner/Plaintiff to seek any injunction against the Respondents who are having title and possession over the subject property.

7. It seems that learned Trial Court was impressed with the fact that there was zone certificate indicating subject property being not available for development and hence injunction seems to have been clamped against the Respondents. Here in this case, it is necessary to note that unless Plaintiff shows any right, title and interest and claims so from the concerned Court, question of granting injunction against the Respondents who are having title and possession of the suit property does not arise. Filing of suit is not a litigation in the nature of Public Interest Litigation in order to

consider any alleged illegality for becoming reason for injunction. In the suit filed by Plaintiff, unless any right, title and interest in the suit property is claimed and prima facie established, Plaintiff would not be entitled for such injunction.

8. This Court, therefore, finds no perversity in the findings recorded by learned Appellate Court and the order of reversing grant of injunction passed by Civil Court does not deserve interference. Hence, both the Petitions stand dismissed.

(R. M. JOSHI)
Judge

dyb

LATER ON :

1. Learned counsel for the Petitioner, after pronouncement of order, seeks continuation of interim relief granted by this Court dated 08.05.2024 for a period of eight weeks, to enable the Petitioner to challenge the order passed by this Court before the Hon'ble Supreme Court.

2. Learned counsel for the Respondents opposes the continuation of the interim relief.

3. Since this Court has granted injunction against Respondents on 08.05.2024, the said order is in force for about six months till today. This Court finds no reason to refuse the request. Hence, order dated 08.05.2024, passed by this Court to continue for further period of six weeks from today.

(R. M. JOSHI)
Judge