



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10825 OF 2023

Sambhaji Sakahari Murkute And Another
VERSUS
Bhavna Prashant Munde And Others

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Mr. B. R. Kedar, Advocate for the Petitioners
Mr. G. K. Kedar, Advocate for Respondents

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CORAM : R.M. JOSHI, J
DATE : JULY 22, 2024

PER COURT :

1. At the outset, learned Counsel for Respondents placed on record affidavit-in-reply. The same is taken on record.

2. By consent of both sides, heard finally at admission stage.

3. Original Defendant No. 4 has filed this Petition taking exception to the impugned order passed by District Judge – 4, Ambajogai in Misc. Civil Appeal No. 55/2022 whereby Defendant Nos. 1, 4 and 5 are restrained from alienating, transferring or creating any third party interest in the property held by them till decision of the suit.

4. Record indicates that suit is filed by Respondent Nos. 1 to 3 against Respondent No. 4 to 5 and Petitioners herein. Respondent No. 1 is wife of Respondent No. 4. The suit property stood in the name of Shehsrao on the strength of sale deed dated 10.02.1988 and on that basis record of rights was mutated in his name. On 02.08.1990 Sheshrao by executing registered gift deed transferred title in the property in favour of Respondent No. 4. This Respondent executed agreement to sale dated 16.12.2020 with Petitioners and on 25.02.2021 registered sale deed was executed after receipt of total consideration of Rs. 21 lacs.

5. Application Exh 5 filed by the Plaintiff i.e. Respondent Nos. 1 to 3 herein was rejected by the learned Trial Court. This order came to be assailed in the Misc. Civil Appeal successfully. Hence, this Petition.

6. Learned Counsel for the Petitioners submit that the documentary evidence *prima facie* indicates that Sheshrao was owner of suit property on the basis of sale deed dated 10.02.1988 and owing to the title

deed, record of rights in respect of suit property was mutated in his name. According to him, there is registered gift deed executed by Sheshrao whereby the said property is transferred to Respondent No. 4. It is his contention that after due search when the Petitioners have found that the Respondent No. 4 holds title in respect of suit property, transaction was entered into for purchase thereof. It is his submission that once property is purchased by paying valuable consideration, right, title and interest in the property stood vested in their favour. As such, question of issuance of injunction against them does not arise. It is submitted that the conduct of Respondent No. 4 can be seen from non filing of written statement which indicates that Respondent Nos. 1 to 3/Plaintiffs and Respondent No. 4 are in collusion.

7. Learned Counsel for Respondents supported the impugned order with contention that suit has been filed with specific averments that suit properties are purchased by the father-in-law of Respondent No. 1 i.e., father of Respondent No. 4 and that said property was purchased by him in the name of Sheshrao. Thus, it

is his submission that property becomes ancestral property and as such, there is no exclusive right therein is created in favour of Respondent No. 4. By referring to documents filed along with affidavit-in-reply, it is sought to be contended that in fact the said property was to be gifted to Respondent No. 1.

8. From *prima facie* perusal of the pleadings it does not appear that the suit properties are ancestral properties. The issue of benami transaction need not to be gone into at this stage. Suffice it to say that there is sale deed in favour of Sheshrao dated 10.02.1988 indicating his right, title and interest in the suit property. Further undisputedly registered gift deed is executed by Sheshrao in favour of Respondent No. 4 whereby the said right, title and interest in the suit property stood transfer in his name. As against this, contention of Respondent No. 1 that it was agreed by Sheshrao of gifting said property to her does not hold substance as transfer of property cannot be effected on the basis of agreement to gift but only by a registered gift. Such document stands in favour of Respondent No. 4 and as such, *prima facie* he was within

his right to execute sale deed in respect of same in favour of Petitioners.

9. This Court finds *prima facie* substance in the contention of learned Counsel for the Petitioner that this could be a case of collusive suit between Respondent No. 4 and Respondent Nos. 1 to 3. Learned District Judge – 4, Ambajogai has failed to take into consideration these aspects more particularly the fact that the *prima facie* transaction in question is bona fide against valuable consideration. In such circumstances, the Court was not justified in clamping injunction against the Petitioners.

10. Having regard to the aforestated discussion, Petitioners have made out a case for setting aside the impugned order. Hence, Petition is allowed. Impugned order is set aside.

(R. M. JOSHI, J.)

Malani