



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11926 OF 2024

Karimabee Sayyad Imam Shaikh Hyder And Another
VERSUS
Jaspalsingh Bhajansingh Mathawale And Others

- Mr. S. S. Gangakhedkar, Advocate for the Petitioners
- Mr. P. R. Katneshwarkar, Senior Advocate i/by Mr. G. R. Syed, Advocate for the Respondents

CORAM : R.M. JOSHI, J
DATE : NOVEMBER 19, 2024

PER COURT :

1. This Petition takes exception to the order passed by the District Judge – 3, Nanded in MCA No. 12/2024 whereby the order passed by the Trial Court below Exh. 5 in RCS No. 308/2021 came to be set aside.

2. Learned Counsel for the Petitioners has drawn attention of the Court to the fact that the Petitioners/Plaintiffs has already amended the plaint and declaration is sought that the sale deed executed by the Original Defendants in favour of the added Defendant to be declared as null and void. It is his submission, by drawing attention of the Court to the observations made by the learned District Judge in

paragraph 10 of the order indicated that the said Court has proceeded on the premise that the suit is for simplicitor injunction, whereas there is subsequent amendment caused in the plaint. According to him, this aspect has not been taken into consideration by the learned District Judge and hence, this is a fit case wherein interference is caused in the impugned order and the matter is relegated back to the District Court for decision a fresh.

3. Learned Senior Counsel for the contesting Respondents has drawn attention of the Court to the previous proceedings between the parties wherein all the issues with regard to the ownership, possession, etc are put to rest and has attained finality. He further submits that in any case it is not open for Petitioner to agitate these issues in present or any other proceeding. Thus, according to him, present suit would always be for simplicitor injunction *qua* original Defendants.

4. No doubt, the original suit is filed for simplicitor injunction and thereafter the amendment is

carried out by the Plaintiffs to the plaint. However, as reflected from paragraph 14 of the order passed by the Trial Court, the said amendment is only to the extent of the declaration of the sale deeds executed *pendente lite* by the original Defendants in favour of added Defendant Nos. 11 to 16. It is thus clear that in so far as original Defendants are concerned, neither there is a suit for declaration of title nor seeking possession of the suit property from these Defendants. As such, for all practical purpose, suit against them is suit for simplicitor injunction only. In any case, the execution of sale deed *pendente lite* would have no independent consequence as the validity thereof would depend upon the outcome of the suit and the purchasers would be bound by decree, if any, passed against their vendor.

5. Net result of the above discussion is that the suit remains to be the one filed for simplicitor injunction and consequential reliefs are not prayed. In the light of these facts, observations made by the learned District Court in the impugned order cannot be faulted with. Even otherwise, since this is not the

case in which injunction can be granted against defendants, order passed below Exh. 5 has been rightly interfered.

6. As a result of above discussion, Petition stands dismissed since it sans merits.

7. At this stage, learned Counsel for the Petitioner seeks extension of order dated 23.10.2024 for a period of three weeks to enable the Petitioners to take exception to present order passed by this Court.

8. Learned Senior Counsel for Respondents opposes the said request on the ground that order dated 23.10.2024 is not passed on merits but the same was granted to enable the Court to hear the matter.

9. Record indicates that order passed by the learned Trial Court below Exh. 5 is enforce since 30.01.2024. This Court, therefore, finds no reason to reject the request made on behalf of the Petitioners for continuation of the protection for further three

weeks. This would enable the Petitioners to challenge the order passed by this Court before the Hon'ble the Supreme Court.

10. In view of the above, order dated 23.10.2024 is extended for further period of three weeks from today.

(R.M. JOSHI, J.)