



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

933 WRIT PETITION NO. 15566 OF 2023

1. Balu, Babu @ Rajesh s/o Keshavrao Survase,
2. Kailas s/o Keshavrao Survase,
3. Manohar @ Venkati s/o Keshavrao Survase,
4. Girjabai w/o Keshavrao Survase,
5. Keshav s/o Tukaram Survase.

..Petitioners

VERSUS

1. Ravindra s/o Govindrao Dhavale,
2. Vithalrao s/o Rangrao Deshmukh.

..Respondents

...
Advocate for the Petitioner : Mr. Khande Avinash A.
Advocate for Respondents No.1 and 2 : Mr. S. S. Deshmukh i/b
Mr. S. S. Jangada
...

CORAM : R. M. JOSHI, J.

Dated : June 12, 2024

PER COURT :-

1. Heard. By consent of both sides, petition is heard finally at the stage of admission.
2. This petition takes exception to the interim order passed by the Trial Court in Special Civil Suit No.14/2022 below Exhibit 5 and 23, and confirmation of the said order by the learned District Court in Misc. Civil Appeal No.93/2023.
3. The respondents are the plaintiffs in Special Civil Suit No.14/2022. They filed suit for injunction against the defendants restraining them from causing interference in their possession in

respect of the suit property which was purchased by them pursuant to registered sale deed dated 04/06/2010. During the pendency of the suit an application came to be filed below Exhibit 13 seeking restraining order against the defendants i.e. petitioners herein from creating third party interest in the suit land till disposal of application Exhibit 5 on the basis of the fact that the revenue record stands in the name of defendants.

4. Defendants appeared and opposed application Exhibit 5 and also filed application Exhibit 23 seeking reliefs against respondents/plaintiffs. By passing impugned order, the learned Trial Court rejected the application Exhibit 23 and allowed Exhibit 5. By this order defendants No.1 to 5 were restrained from transferring the suit property in any manner whatsoever. Similarly, they were restrained from obstructing the possession of the plaintiff over the suit property.

5. Learned Counsel for petitioners submits that both the Courts below have committed serious error in rejecting application Exhibit 23 and allowing Exhibit 5 filed by the plaintiffs. It is his contention that without any justification, both Courts were influenced with the

fact that in Regular Civil suit No.85/2012 the sisters of father of defendant No.1 had challenged the sale deed in question and the said suit was dismissed. It is his further submission that if the plaintiffs had purchased the suit property in the year 2010, then it does not stand any reason as to why no action was taken for mutation of the revenue record in their name. It is his further submission that suit has been filed in order to create a ground to take possession of the suit property. He claims that the suit property is in possession of the defendants. By drawing attention of the Court to order dated 18/01/2022, passed below Exhibit 13, it is contended that even thereafter no effective steps were taken by the respondents/ plaintiffs for pressing the application Exhibit 5. It is his submission that under the guise of the impugned order, plaintiffs are likely to take possession of the suit property. Alternatively, he submitted that as the petitioners/defendants are restrained from creating any third party interest in the suit property, in similar manner, the plaintiffs also be restrained.

6. Learned Counsel for respondents/ plaintiffs supported the impugned orders.

7. At the outset, it needs to be recorded that this Court is dealing with the writ petition challenging the interim relief granted by the Trial Court which is confirmed by the District Court. Needless to say that unless this Court finds perversity in the said findings, there would be no propriety to cause any interference therein. The facts of the case as they appear from the prima facie perusal of the record indicates that in the year 2010 sale deed was executed in respect of the suit property by the erstwhile owner in favour of plaintiffs. There is no dispute made with regard to the execution of a registered sale deed in this regard. It is pertinent to note that in the year 2012 Regular Civil Suit No.85/2012 came to be filed by Prayagbai and Gopal against present respondents/ plaintiffs and Kailash and Venkati. Though it is sought to be contended that Kailash and Venkati were minor at the relevant time, the copy of Judgment in Regular Civil Suit No.85/2012 indicate that they were duly represented by their father as a guardian. Thus, it is clear from the record that the petitioners had knowledge in respect of the Regular Civil Suit No.85/2012. Needless to say that the respondents/ plaintiffs were joined as a party to the suit only for the

reason that the suit properties were sold to them. In such circumstances, it was incumbent on the part of Kailash and Venkati to challenge the sale deed executed in favour of the plaintiff and also to state specifically that the possession of the suit properties still remain with them. Nothing is done in this regard by them.

8. The contention of the petitioners about denying the factum of the possession of the suit land with plaintiffs rests on the fact, that no attempts were made by the plaintiffs to mutate the suit properties in their name. In this regard, it is pertinent to note that the said aspect has been duly considered by the learned Trial Court with observation that the suit filed in the year 2012 came to be decided on 27/01/2017, which the Court found to be adequate explanation for not taking steps to mutate the suit property in their name. This Court find no reason or justification to interfere into the said findings recorded by the learned Trial Court and confirmed by the District Court.

9. It needs to be recorded that the title of the suit property has been said to be transferred in the name of plaintiffs on the basis of a registered sale deed. Perusal of the said document on record, prima

facie indicates that the same is supported by consideration with specific recital about the suit property being given into the possession of the plaintiffs. In view of this fact coupled with the conspicuous silence of Kailash and Venkati in Regular Civil Suit No.85/2012 claiming possession of the suit property, this Court finds no reason or justification to accept the contention of the Counsel for the petitioners that the petitioners are in possession of the suit property and the plaintiffs are likely to take disadvantage of the interim orders.

10. Though it is sought to be canvassed before this Court that there be order of some injunction against the plaintiffs restraining them from creating third party interest in the suit property. In this regard, it is pertinent to note that there is no prayer made in Exhibit 23 to that effect. This Court cannot pass any order while exercising writ jurisdiction in respect of the matter which was never agitated before the Trial Court. Hence, the request stands rejected. Petition is dismissed with the above observations.

11. Learned Counsel for the petitioners submits that the petitioners wishes to challenge this order before the Hon'ble

Supreme Court, and hence, he seeks continuation of order dated 20/12/2023 for a period of six weeks.

12. Learned Counsel for the respondents opposes the said request.

13. Since the order is in force for last about six months, this Court find it appropriate to extend the same for further four weeks. Hence, order dated 20/12/2023 to remain in force for four weeks.

(R. M. JOSHI, J.)

vj gawade/-.