

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3079 OF 2024

WITH

WRIT PETITION NO. 3081 OF 2024

Vithoba Nama Madane (Ramoshi)

.. Petitioner

Versus

Vaishali Rajendra Markad & Ors.

.. Respondents

.....

- Mr. Machhindra A. Patil a/w Mr. Vijay R. Garad & Mr. Jaydeep Shringare for Petitioner
- Mr. Anilkumar Patil a/w Mr. Sachin Madhav Bhavar, Mr. Rahul Rote and Ms. Zeel Jain for Respondent No. 1

.....

CORAM : MILIND N. JADHAV, J.

DATE : MARCH 18, 2024

P. C.:

1. Heard Mr. Machhindra A. Patil, learned Advocate for Petitioner and Mr. Anilkumar Patil, learned Advocate for Respondent No. 1 (Org. Defendant No. 2) at length. With their able assistance, I have perused the twin orders dated 19.01.2022 and 25.01.2024 which are subject matter of the present Writ Petitions.

2. Order dated 19.01.2022 is a common order while disposing of Exh. 5 Application of Petitioner (Org. Plaintiff) and Exh. 22 Application filed by Defendant No. 2 with respect to the Defendants' counterclaim. By virtue of that order, Exh. 5 stood allowed. Being aggrieved, the Defendant No. 2 on the strength of two registered Sale Deeds both executed and registered in the year 2014 followed by a

subsequent mutation entry in the revenue record filed Civil Misc. Appeal No. 17 of 2022. By virtue of the impugned order dated 25.01.2024 passed in the said Civil Misc. Appeal, the order dated 19.01.2022 was reversed.

3. I have perused the reasons given by the learned Appellate Court while delineating the documentary evidence placed on record by the parties with the able assistance of both the learned Advocates. I have therefore expressed my mind to Mr. Machhindra Patil. He would submit that no reasons be given and the Suit be expedited.

4. Suit property is described in paragraph No. 2 of the Suit plaint namely Survey Nos. 92/1/A and 92/1/B. Out of this, Defendant No. 2 claims to be the purchaser, rather the subsequent purchaser in the chain of transfers which had taken place in so far as Survey No. 92/1/A is concerned. Both registered Sale Deeds executed and registered in the year 2014 and exchanging consideration of Rs. 70 Lacs and 60 Lacs for the two properties are placed on record by Defendant No. 2. I have perused the same.

5. Mr. Anilkumar Patil would contend that there is a specific prayer i.e. prayer clause (b) in the Suit Plaint which seeks a declaration that these Sale Deeds are not binding on the Plaintiff. Plaintiff will have to

therefore succeed on the strength of his own evidence and witness action in accordance with law.

6. Without disturbing the order dated 25.01.2024 and also without commenting on any of the merits of the matter, the said order is sustained with a caveat that the observations and findings made in that order shall not influence the final decision of the Trial Court in the Suit proceedings as also the trial. Nothing shall preclude the Petitioner i.e. Plaintiff before me to lead cogent and reasoned evidence on the strength of Petitioner's case in the trial and if so done, the same shall be determined strictly in accordance with law without being influenced by any of the observations in the impugned order dated 25.01.2024 as also in the order dated 19.01.2022 passed by the learned Trial Court. Learned Trial Court is requested by this Court to determine RCS No. 778/2021 as expeditiously as possible.

7. With the above directions, both the Writ Petitions are disposed.

[MILIND N. JADHAV, J.]

Amberkar

RAVINDRA
MOHAN
AMBERKAR
Digitally
signed by
RAVINDRA
MOHAN
AMBERKAR
Date:
2024.03.18
17:57:12
+0530