

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14880 OF 2023
WITH
INTERIM APPLICATION NO. 7124 OF 2024

Harshwardhan Dhanaji Patil

Petitioner

.. (Org. Plaintiff)

Versus

Vikas Tanaji Patil

Respondent

.. (Org. Defendant)

.....

- Mr. Sandeep Koregave a/w Ms. Pallavi A. Karanjkar for Petitioner
- Mr. Manoj A. Patil a/w Mr. Akash Murudkar & Ms. Kalyani Mangave for Respondent

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 10, 2024

ORAL JUDGMENT:

1. Heard Mr. Koregave, learned Advocate for Petitioner and Mr. Patil, learned Advocate for Respondent.
2. Present Writ Petition takes exception to the judgment & order dated 30.10.2023 passed by the learned District Court in Misc. Civil Appeal (MCA) No. 206/2023 upsetting the order dated 22.06.2023 passed by the learned Trial Court in Exh. 5 proceedings.
3. Briefly stated, some basic facts need to be narrated before I advert to the pleadings in the Plaint and the case of the Plaintiff who is before me. Respondent (Org. Defendant) is aggrieved due to stay granted by this Court on the impugned order.

3.1. Dispute between parties pertains to an area admeasuring 1.83 R out of Gat No. 189 and construction being carried out on the said suit property by the Defendant. Admittedly Gat No. 189 belonged to Dattatraya Gangaram Patil who expired on 25.08.1979 as per Revenue Record. He was survived by his wife Hirabai, one son Dhanaji and six daughters namely Gourabai, Droupadi, Sakhubai, Indubai, Malubai and Nakusha. At this stage, Mr. Patil has drawn my attention to page No. 86 of the Writ Petition and would submit that the suit property originally stood in the name of Satappa, brother of Dattatray and Anubai, his wife. On their demise, the said Gat number was recorded and mutated in the name of Dattatraya G. Patil. Hirabai expired on 22.02.2016 whereas Dhanaji predeceased her on 25.10.2015. Dhanaji Dattatraya Patil is survived by his son Harshwardhan who is the Petitioner (Org. Plaintiff) and two daughters. Curiously Plaintiff filed the Suit on the premise that his claim is in respect of ancestral property belonging to Dattatraya G. Patil without even impleading his own sisters as also the other legal heirs which would be otherwise be entitled to under the six sisters of Dhanaji.

4. Defendant's case is that he is in possession of the suit property on the basis of an unregistered Sale Deed, which is denied by the Plaintiff. Defendant claimed that this Sale Deed dated 14.08.1993

was executed between Hirabai and Tanaji Patil i.e. father of the Defendant pursuant to which Tanaji was put in possession of the suit property and Defendant's family has been enjoying the same since 30 years without any hindrance.

5. Case in the Suit plaint filed in the year 2023 by the Plaintiff is on the basis that Plaintiff was having his own RCC old house on the suit property wherein he was storing his agricultural equipments and movable properties. Plaintiff has averred that he stopped using the said house since it was old and dilapidated and it is only in the year 2023 for the first time he found that Defendant had started construction on the suit property which had reached upto the plinth level after which the Suit was filed claiming injunction against the Defendant and possession of the suit property. It is thus seen that if the Suit is filed for possession of the Suit property then it should only have been on the basis of the Plaintiff having lost possession of the suit property to the Defendant. In that regard i.e. issue of possession, both the Courts below i.e. Trial Court and District Court have categorically acknowledged that the possession of the suit property is with the Defendant. Whether and how the Defendant has perfected his title would ultimately depend upon the evidence in the Suit led by him since the Suit is not filed for title but only for injunction and possession by the Plaintiff. There is additional evidence

which has been delineated in both the orders passed by the Courts below which *prima facie* show that the Defendant was in possession of the suit property since long either himself or through his father Tanaji. The question then that would arise in such case is whether did the Defendant dispossess the Plaintiff. But on reading the Suit plaint, there is not an iota of material evidence produced by the Plaintiff. The case of the Plaintiff that 8 days before filing the Suit, the Defendant forcibly entered the Suit property and started construction after demolishing the Plaintiff's old house is *prima facie* unbelievable and appears to be a concocted story. The first thing the Plaintiff would have done in such a case is to rush to the Police and file a Complaint. It has not been done.

6. As delineated herein above, both the Courts have not only acknowledged the Defendant's / his father's possession of the suit property since 1993 but have also referred to the house structure standing thereon nomenclatured as House No. 307. In so far as the learned Trial Court is concerned, while allowing Exh. 5 Application, it proceeded on the premise that there is a dichotomy in respect of the correct nomenclature of the house structure occupied by the Defendant which is the suit property on Gat No. 189. Needless to state at this stage is the fact that the Plaintiff is occupying the balance area out of Gat No. 189. This is required to be stated at this stage

because both the parties have filed documentary evidence in respect of the assessment charges, water tax, statutory dues etc. paid by them in respect of their respective holdings. Thus documentary evidence has been filed before the Courts below and that has been appreciated by both the Courts. Claim of the Petitioner is based merely on the basis of a mutation entry which stands in the name of his grandmother Hirabai being shown as the holder of the Suit property. What is significant to be noted is the fact that there is no evidence of the Plaintiff or his predecessor having cultivated the suit property to show that the suit property was agricultural in nature, though such a claim is also raised by the Plaintiff and dealt with by the Courts below. However there is voluminous evidence to show that the suit property on the other hand has been constructed upon and was been used by the Defendant and the house structure standing thereon was House No. 307. Defendant has been provided water connection as also electricity connection in respect of this very structure in his name details of which have also been placed on record and examined by the Court. Plaintiff can therefore never deny that the Defendant was never in possession or that the suit property was agricultural in status or nature. Substantial evidence in the form of documentary evidence has been placed on record by the Defendant to show that the Defendant has been paying the statutory dues and property taxes in

respect of the suit property occupied by him. In fact, Defendant has mortgaged the suit property to two different banks i.e. Janata Sahakari Bank, Ajara and Kagal Co-operative Bank, Kagal at two different points of time (in 2011 and 2017) and has raised a loan on the said property. It seems that and which is borne out from the order passed by the learned Trial Court in Exh. 5 that the adjacent owner of the suit property namely Sunita Morbale started construction of her house / structure after demolishing her earlier house which also led to the Defendant undertaking construction of his own dilapidated house which is the trigger to file the Suit proceedings. Suit is filed after 30 years of handing over possession of the Suit property. What is significant to note is the fact that after the execution of unregistered sale deed dated 14.08.1993, possession of the suit property was handed over to the Defendant's father and he constructed house / structure No. 307 on the suit property which was recognized by the Grampanchayat all throughout.

7. Today Mr. Koregave would repeatedly submit that wife of the Defendant is a member of the Grampanchayat and therefore she is influential and it would be easy for the Defendant to obtain any documentary evidence in favour of the Defendant. This submission of Mr. Koregave is naive and immature. Rather than focusing on the strength of the Plaintiff's case, irrelevant submissions are made by Mr.

Koregave. It is significant to note that each and every documentary evidence has been *prima facie* considered and appreciated by the learned District Court while upsetting the order passed under Exh. 5 by the learned Trial Court. It is quite natural that when an unregistered sale deed is executed, it would be of the land and the construction of the house would be carried out thereafter. In the present case also the same has happened. Hence the case of the Plaintiff that the unregistered sale deed does not mention the house property / structure therein cannot be of any significance whatsoever. Despite agitating this submission, learned District Court has rejected it on the basis of substantive evidence in respect of existence of the house structure subsequent to the sale deed.

8. As stated above, the mortgages which were executed in respect of the house structure were sometime in the years 2011 & 2017 as delineated in the findings returned by the learned District Court in paragraph No. 7 of its judgment. This itself signifies and defeats the case of the Plaintiff in the suit plaint altogether. It is not one but two banks who have advanced loan and mortgaged the suit structure belonging to the Defendant which *prima facie* shows the existence of the structure.

9. Next and most important is the fact that property tax receipts since 1999 until the present have been filed by the Defendant

which have been taken cognizance of. The property tax receipts are in the name of Tanaji Govind Patil i.e. father of the Defendant. One of the argument of the Plaintiff is that some of these receipts and the water tax receipts do not show the house number. This submission deserves to be rejected on the face of it. It is the case of the Plaintiff in the Suit plaint that only eight days prior to filing of the Suit plaint, he was in possession of the suit property and the Defendant forcibly entered into the suit property, demolished the house belonging to the plaintiff and started construction on the suit property. In view of my observations, such case of the Plaintiff in the Suit plaint cannot be accepted.

10. From the above what can be gathered is the fact that *prima facie* the Defendant and this father have been paying taxes in respect of the house No. 307 on Gat No. 189. There is a Grampanchayat extract in respect of the said House No. 307 which is in fact the suit property according to the Defendant standing in the name of Tanaji Govind Patil having an area admeasuring 50.17 sq. ft. With such *prima facie* overwhelming evidence, it would be difficult to consider the Plaintiff's case at the interim stage.

11. In view of the above, I find no reason to interfere with the cogent reasons which are returned by the learned District Court in paragraph Nos. 7 to 15 of its judgment. What is of immediate concern

is the fact that by virtue of the order dated 05.12.2023 passed by this Court, the construction of the house property of the Defendant has been stayed. From the reasons ascribed in the said order, it is *prima facie* stated that the Plaintiff is the owner of the suit property and the Defendant's right is on the basis of the unregistered sale deed. Save and except this statement there is no other reason given in the said order dated 05.12.2023. However after going through the pleadings in the present case and analyzing the above facts, I am of the clear and definite opinion that possession of the Defendant of the Suit property is a long standing possession which cannot be ignored by this Court in view of the voluminous documentary evidence which has been referred to not only by the learned Trial Court but also by the learned District Court in their respective decisions. The question whether the Defendant would have perfected his title on the basis of the unregistered sale deed would be a matter of trial before the learned Trial Court. *Prima facie* and after going through the pleadings, whether the Plaintiff would even have a semblance of a right to maintain such a Suit to the exclusion of the other co-owners and legal heirs claiming through Gourabai, Droupadi, Sakhubai, Indubai, Malubai and Nakusha or such sisters of Dhanaji, if they are still alive or their legal heirs would also be a question to be determined.

12. Be that as it may, on the basis of the above observations and findings, the judgment and order passed by the learned District Court dated 30.10.2023 not only deserves to be upheld but the interim relief granted by this Court in terms of prayer clause (d) without any analysis and reasons by its order dated 05.12.2023 deserves to be immediately vacated. Hence Defendant is permitted to construct and carry out his construction on the suit property. Needless to state that it shall be subject to the outcome of the suit proceedings. It is also clarified that all contentions of the parties are expressly kept open. Order dated 05.12.2023 stands vacated.

13. With the above directions, Writ Petition stands dismissed.

14. In view of the above, Interim Application No. 7124 of 2024 filed by the Respondent for vacating the interim order does not survive and the same is disposed.

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[MILIND N. JADHAV, J.]