

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9643 OF 2024

Vijaya Laxman Zalke

...Petitioner

Versus

Annapurna Kalyan Mantagi And Ors

...Respondents

Ms. Preeti Walimbe i/b. Mr. Bhushan Walimbe for Petitioner.
Mr. Drupad S. Patil a/w. Namitkumar S. Pansare and Mr. Suyesh Sule,
for Respondents.

CORAM : M.M. SATHAYE, J.

DATE : 24 JULY 2024

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P.C. :

1. Heard learned counsel for the parties. Perused the record.
2. The Petitioner is original Plaintiff in Regular Civil Suit No. 40 of 2021 filed in the Court of Joint Civil Judge, Junior Division at Akkalkot, District Solapur against the Respondents. The suit property is north-south portion admeasuring 81-R on the eastern side of agricultural land Gat No. 255 situated at Borgaon(De), Taluka Akkalkot, District Solapur.
3. This suit is filed with sole prayer that the Respondents should not disturb the Petitioner's possession in the suit property. The prayer sought is in the nature of perpetual injunction. Along with the suit, Petitioner filed application seeking same interim injunction against the Respondents, pending the suit. The Petitioner filed certain documents in support of her case viz. the mutation entry by which her name is mutated on the basis of registered sale deed dated 2 May

2016 executed by Respondents, her bank account passbook, 2 receipts showing payment of agriculture cess by the Petitioner for the year 2020 & 2021. It is the case of the Petitioner that she is owner in possession of the suit property under the said sale deed, and in June 2021 when the Petitioner visited suit property for cultivation work, the Respondents obstructed her possession and that led to filing of the said suit.

4. The Respondents have filed written statement cum reply and contended that they have never parted with the possession of suit property in favour of the Petitioner. It is contended that suit property is still in their possession. Since the family of the Respondents was in dire need of money to meet medical expenses for their son who was mentally ill, the Petitioner's father lent Rs. 2 Lacs on interest @ 3% per month and the sale deed relied upon by the Petitioner was executed only by way of security for the said loan transaction. It is contended that the sale deed is hollow, illegal and without possession; therefore no injunction be granted because the Petitioner is not in possession. It is also contended that the sale deed relied upon by the Petitioner is also barred under the provisions of the Maharashtra Prevention Of Fragmentation And Consolidation Of Holdings Act, 1947. It is contended that when the Respondents went to Petitioner's father, he demanded Rs. 17 Lacs with interest for selling back the suit property to them. It is contended that both the Petitioner and her father are illegal money lenders against whom they have filed complaint under The Maharashtra Money Lending (Regulation) Act, 2014 ('the said Act' for short) of which proceedings

are pending. The subject matter transaction is also an illegal money lending transaction. Respondent No. 1 is widow and other Respondents are illiterate, depending solely on the suit property for their livelihood. Respondents have thus prayed for dismissal of suit.

5. The learned Joint Civil Judge, Junior Division, Akkalkot by order dated 25 November 2022 allowed the Petitioner's application restraining the Respondents from obstructing the Petitioner's alleged possession. The Respondents filed Miscellaneous Civil Appeal No. 164 of 2022 in the District Court at Solapur, which was heard and by present impugned order dated 16 April 2024, the Ad-hoc District Judge-1, Solapur has allowed the miscellaneous Appeal, thereby setting aside the order of the Trial Court and rejecting the Petitioners' application for interim injunction. It is in these circumstances that the Petitioner/ Plaintiff is before this Court.

6. Learned counsel appearing for the Petitioner submitted that the Appeal Court decided against the Petitioner primarily on the basis of proceedings before the learned Assistant Registrar, Co-operative Society, Akkalkot which are pending under the provisions of the said Act. It is submitted that the Appellate Court seems to have lost sight of the registered sale deed as well as mutation entry produced by the Petitioner which points to the Petitioner's possession. It is submitted that in a similar set of circumstances, the Petitioner's father has also filed a suit against one Mr. Khobare in which similar orders were passed viz. the injunction was granted by the Trial Court, but at Appellate stage, application for interim injunction is rejected. Inviting this Court's attention to the order dated 17 October 2023 in

Writ Petition No. 9147 of 2023 filed by Petitioner's father, learned counsel for the Petitioner submitted that in that matter, this Court has admitted the petition and has held as follows:

"1. Arguable questions are raised.

2. Rule.

3. It appears that the Appellate Court relying on the order of Assistant Registrar in exercise of power under Money Lending Act has held defendant could be in possession.

4. Considering the scheme of Money Lending Act, power conferred on Assistant Registrar is to set aside the sale deed after the conditions prescribed are fulfilled and in that case can pass an order of restoration of possession. Before passing such final order, the Registrar has no power to grant such certificate that defendant could be in possession.

5. Petitioner claims possession and title based on sale deed executed in the year 2014.

6. Till the orders are passed by the Competent Authority under the provisions of Money Lending Act, possession of plaintiff needs to be protected. Hence, following order:

a) There shall be interim relief in terms of prayer clause (b).

b) It is made clear that interim relief will be subject to final adjudication of proceeding pending before the Competent Authority under Money Lending Act."

7. Learned counsel for the Petitioner submitted that considering similarity of the circumstances, same course should be adopted in this matter also. It is submitted that sale deed coupled with revenue

record is sufficient to prove Petitioner's possession and documents from pending proceedings under the said Act should not weigh higher.

8. On the other hand, learned counsel for the Respondent/Defendants submitted that the fact of Petitioner and her father being involved in illegal money lending transaction, is writ large on the face on the record. He pointed out the documents produced by the Respondents before the Trial Court as well as Appellate Court in the form of search and seizure panchnama dated 11 June 2021, spot panchnama dated 13 August 2021 and report dated 12 October 2021 by Assistant Registrar of the Co-operative Society, Akkalkot to the District Deputy Registrar of Solapur. He submitted that if these documents are perused, there is sufficient material before the Court to weigh against the sale deed and mutation entry and to arrive at a conclusion as to who is in physical and actual possession of the suit property. He submitted that the order passed by this Court in writ petition filed by the Petitioner's father admitting the petition cannot be taken as a binding precedent. He further submitted that what was under consideration before the trial Court as well as Appellate Court and what is under consideration in this Court is whether the Petitioner has *prima facie* case sufficient to support her claim of actual possession on the basis of title document. He submitted that the Respondents' complaint against the Petitioner under the said Act is prior to filing of the suit, which is clear from the record. He submitted that present suit is nothing but a counter blow. He therefore submitted that the exercise of discretion as done by the lower Appellate Court needs no

interference, and the petition be rejected.

9. For the satisfaction of the Court, I have gone through the documents produced by both sides before the Trial Court and Appellate Court.

10. Perusal of the Trial Court order shows the learned Trial Judge has relied upon recitals of the sale deed in favour of the Petitioner and has observed that there is no mention of any money lending transaction in the said sale deed. It is further held that the proceedings pending against the Petitioner before the authority under the said Act (Deputy Registrar) cannot be given any importance because proceedings are 'pending'. It is further held that the case of the Respondents that they are in actual possession despite the registered sale deed because it is nothing but illegal money lending transaction, are hollow words which cannot be believed. The learned Trial Judge has relied upon Sections 91 and 92 of the Indian Evidence Act, 1872 brushing aside the case of the Respondents about real intention of the parties. The learned Trial Judge also concluded that at this stage it cannot be held that the Petitioner is trying to misuse the sale deed.

11. By the impugned order, the miscellaneous appeal filed by the present Respondents is allowed and injunction is refused. In the present writ petition, the legality and validity of this order is under challenge.

12. Perusal of the reasons given by the Appellate Court shows that it has considered the statements recorded during proceedings under the said Act, which indicate that the Respondents are in

possession of the suit property. It has also considered the report of the spot inspection conducted during the proceedings by Assistant Registrar under the said Act, pursuant to money lending complaint filed by the Respondents and one more family namely 'Khobare' wherein it is found that the Respondents are in possession of the suit property. The Appellate Court has also taken cognizance of the fact that during the proceedings of money lending complaint, a raid was conducted on Petitioner's father when he was found in possession of many similar sale deeds including the sale deed of the suit property, Gat No. 255. These documents have led the Appellate Court to exercise discretion against the Petitioner and set aside the order of injunction granted by the Trial Court.

13. The learned counsel for the Respondents has invited this Court's attention to the documents which were produced before the Trial Court and the Appellate Court, including the complaint filed by Respondents before the authority under the said Act against the Petitioner, 7/12 extracts and mutation entries of other properties indicating purchase by the Petitioner and its resale to the earlier owner later for higher consideration, a search and seizure panchnama dated 11 June 2021 recording that when house of the Petitioner's father was raided and searched, as many as 13 sale deeds were seized including the sale deed of suit property Gat No. 255. Learned counsel for the Respondents has further invited my attention to the spot panchnama dated 13 August 2021 and report of the Assistant Registrar given to the District Deputy Registrar dated 12 October 2021 about proceedings/complaint of the Respondents filed against the Petitioner. In the said report, the fact of finding sale deed

of the suit property during raid and finding the Respondents in possession of the suit property during spot inspection are clearly mentioned.

14. The documents and materials highlighted above in my view clearly indicate that the possession claimed by the Petitioner is only paper possession and the Respondents are in actual possession of the suit property and no fault can be found with the exercise of the discretion by the lower Appellate Court against the Petitioner and in favour of the Respondents.

15. The argument of the Petitioner is that in the case of Petitioner's father in identical situation involving another Respondent/Defendant (Khobare) this Court has issued Rule and interim relief is granted and therefore, in the present case also same view should be taken.

16. I am afraid the said order passed in the petition filed by the Petitioner's father (Writ Petition No. 9147 of 2023) is an order admitting the Petition and it does not constitute a binding precedent. Useful reference can be made to the observation of the Hon'ble Supreme Court in the case of *Union of India and Ors Vs. Dhanwanti Devi and Ors.*¹ relied upon by the Respondents. While explaining the concept of the precedent, Hon'ble Supreme Court has clarified that only the essence of the decision and its ratio is binding and not every observation found in the judgment. It is also held by the Hon'ble Supreme Court that every decision must be read as applicable to the particular facts proved. In the present case, firstly the order relied by the Petitioner is not a judgment and secondly the powers of the

¹ (1996) 6 SCC 44

Assistant Registrar to order restoration of the possession is not under consideration in this petition. Also, the Assistant Registrar has not issued any certificate, but it is a report to Dist. Deputy Registrar based on certain documents. What is under consideration really is an exercise of discretion on the basis of preponderance of probabilities emerging from the documents on record.

17. It is undisputed that the family of the Respondents and family of one Mr. Khobare have filed complaints against the Petitioner and her father complaining of illegal money lending transaction in respect of their properties. It is also undisputed that in the said proceedings under the said Act, the house of the Petitioner's father was raided and as many as 13 sale deeds have been seized about which *panchnama* is on record. It is also not disputed that the sale deed of the present suit property Gat No. 255 of the Respondents was also found in the said raid. It is also not disputed that in spot inspection, the Respondents were reportedly found in possession. A bank passbook of the Petitioner can hardly be an evidence of possession in respect of the property and the two receipts produced by the Petitioner showing payment of agricultural cess do not mention the suit property number. All these documents unequivocally and sufficiently indicate, in my opinion at least at the stage of interim relief during suit, that the Petitioner is not in actual possession of the suit property.

18. In *Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by LRS and Ors.*² the Hon'ble Supreme Court has specifically considered the scope of the prohibitory injunction relating to the immovable property. It

² (2008) 4 SCC 594

has to be kept in mind that the present suit is a suit simplicitor for injunction on the basis of assertion of the title. The petitioner has not sought any declaration of ownership. In the said judgment the Hon'ble Supreme Court has held as below:

“13.3 Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from the defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of the plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction”.

19. Facts of the present case squarely fall in such category of suit. In the present case also, the title of the Petitioner to the suit property is under cloud and the Respondents/Defendants themselves assert to be owners and in possession, because the sale deed on which the Petitioner is basing her claim, itself is claimed to be an outcome of illegal money transaction for which proceedings as provided under law are pending. In such situation, the plaintiff will have to sue for declaration of the title and a consequential relief for an injunction. The present suit filed by the Petitioner is clearly not fulfilling the conditions narrated above. Therefore, the suit itself as it stands today, cannot be the proceedings in which the Petitioner can be held entitled for interim relief claimed.

20. In the aforesaid factual and legal backdrop, I do not see any justifiable reason to interfere in the impugned order. There is no error

apparent on the face of the record or perversity in the conclusion drawn by the Appellate Court. The petition is therefore without merits and the same is dismissed. No order as to costs.

21. It is clarified that this being an interim stage, the suit shall be decided on its own merits without being influenced by observations in this order.

(M.M. SATHAYE, J.)