

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2326 OF 2023

SATISH
RAMCHANDRA
SANGAR

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SATISH RAMCHANDRA
SANGAR
Date: 2024.12.07
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Jyostna @ Shakuntala Dhondiram Chavan

Age : 48 Years, Occupation : Household,
Residing at : 44A, Railway Lines, Near
Banshankari Hospital, Dufferin Chowk,
Solapur.

**...Petitioner
(Original Defendant)**

Versus

1. **Mohan Vinayak Malvadkar**

Age : 53 Years, Occupation : Business

2. **Shobha Mohan Malvadkar**

Age : 51 Years, Occupation : Household,
Both Residing at : 44A, Railway Lines,
Near Solapur Municipal Corporation,
Solapur.

**...Respondents
(Original Plaintiffs)**

Mr.Ajit V. Alange:-	Advocate for Petitioner.
Mr.Mandar Soman i/b. Mr.Swaroop Karade:-	Advocate for Respondents.

CORAM : S. M. MODAK, J.

DATE : 27th NOVEMBER 2024

P. C. :-

1. Heard learned Advocate Shri.Alange for Petitioner/Defendant and learned Advocate Shri.Soman for Respondents-Plaintiffs.

2. The Plaintiff Nos.1 and 2 are the husband and wife whereas, Defendant claims to be the wife of the Plaintiff No.1. According to her, the marriage took place on 19th May 1994 and one son by name Shubham is born out of that wedlock on 22nd July 1995. This theory of marriage is not referred anywhere in the Plaint. In fact, the Plaintiff has averred that Defendant is representing herself as the wife.

3. There are four properties described in Para No.1 as A, B, C, D of the Plaint. The Plaintiffs have explained the source of acquisition of all these properties. The Plaintiffs filed a simplicitor suit of injunction on the basis of cause of action that occurred on 1st July 2021. (Para No.14). The Plaintiffs pleaded that the property at 1(A) is used for residential as well as commercial use and they have obtained a building permission from the Local Authority on 6th October 2020. That is why, they have pleaded that Defendant is obstructing the construction activity.

4. By way of written statement, Defendant has pleaded that she along with the Plaintiff No.1 has resided in the property at Sr.No.1(A) and left her alone and deserted her. In fact, the Plaintiffs disconnected the electricity connection and she has taken a sub-meter from the neighbours. Defendant pleads that the son born from the wedlock is

having right, title and interest in the Suit property. She has also pleaded about non-joinder of the son Shubham.

5. The suit is simplicitor for injunction. There are no other reliefs. For deciding temporary injunction Application, the Court is supposed to consider who is in possession of the property at Sr.No.1 (A), whether it is the Plaintiffs or whether it is the Defendant. Court has to form a prima facie opinion.

Orders challenged

6. The trial Court as per the order dated 15th December 2021 has **rejected** the temporary injunction Application. However, the Plaintiffs have succeeded before the Appellate Court and Defendant is injuncted as per the order dated 16th November 2022. Learned Advocate Shri.Alange has invited my attention to the observations of the trial Court and observations of the Appellate Court also.

About documents

7. The claim of the parties as to possession has to be tested on the basis of averments and supporting documents. It is true that the parties have referred few documents before the trial Court. Some of them are annexed to this Writ Petition from Page Nos.72 to 79. Whereas, both the parties also prayed before the Appellate Court for production of

additional documents as per the provisions of Order 41, Rule 27 of the Code of Civil Procedure, 1908 (“CPC”). **It was disallowed as such Applications are not tenable.** (Para No.16). This order is not challenged by any of the parties before this Court. On this background, at this stage, the documents plays a crucial role.

8. This matter is listed on priority basis and it is for the reason, Petitioner Defendant has expressed the fear that the Respondents are likely to dispossess her on the basis of the order dated 11th November 2024 passed by the trial Court. A copy of the Application of the Plaintiff and reply and the order are produced by the Petitioner. **They are taken on record and marked Annexure-X collectively.** The trial Court has given a Police protection to the Plaintiffs and it is for the reason that the Defendant – present Petitioner is trying to obstruct the construction.

9. It is true, the documents on Page No.72 is **Aadhar Card** and on Page No.74 is the **Ration Card**. They are in the name of the Defendant and it shows the address as 44/A, Railway Lines. Though Mr.Soman tried to submit that this address is different from the property at 1 (A), I am not impressed because in the title clause of the Plaint, the same address is given and in the written statement (Para No.17), the

Defendant has given the same address. However, it is true, the Appellate Court has made a comment about this Ration Card and Aadhar Card in Para No.15. The Appellate Court has opined, the earlier address of the Defendant was different from the property at Sr.No.1(A). After reading those documents, one can gather that the address is changed and on other Aadhar Card also, there is a change of address on 28th December 2021. Those findings are correct.

10. It is true that there is a gas connection document on Page No.77 in the name of Shubham and the Certificate of Domicile of Shubham on Page No.79. In the gas connection, the same address is mentioned. Mr.Soman invited my attention to the date of this gas connection. It is dated 13th July 2022 i.e. after filing of the Suit in the year 2021. Now, it is submitted by Mr.Soman that this gas connection was not filed before the trial Court and it is part of additional evidence which is rejected. Even otherwise, Court has to ascertain the factum of possession earlier and at the time of filing of suit. Those documents do not support Defendant's claim.

11. If, these observations are considered, I do not find any other documents to show that the Defendant was residing in the premises at 1(A) along with the Plaintiff No.1 immediately earlier to filing of suit.

Because, Court has to consider that fact particularly for deciding temporary injunction Application. Ultimately, the possession when the Suit was filed has to be considered. It can be considered on the basis of the averments and the documents.

12. There is one **Affidavit of Shri.Arvind Tapake** on Page No.80. The contents are on the same line as that of averments in the written statement. Even though, the witness might have deposed about certain facts, it has to be considered on the basis of available documents. This Affidavit does not make Defendant's case believable at this stage. The Appellate Court has referred about the documents filed by the Plaintiff and also by the Defendants. All are not annexed to the Petition. Even, Respondents have not produced those documents. This Court has no occasion to peruse them. That is why, the documents which are annexed to the Petition are perused. But, one fact is clear, there is **building permission** granted and it is referred by both the Courts below. Though, there is a submission on behalf of Petitioner that it is cancelled, fact remains is that it was granted. The subsequent cancellation is not substantiated. Hence, this Court cannot consider it.

13. If, looked from this angle, I do not find any reason to upset the observations given by the Appellate Court by exercising writ

jurisdiction. The Appellate Court on the basis of the available documents, has rightly injuncted the Defendant.

14. The issue is very limited, whether the Plaintiffs were in possession or whether it was the Defendant who was in possession at least at the time of filing of the suit. The said submission cannot be considered. Defendant can raise it elsewhere.

15. Above observations are *prima facie*. Ultimately, suit will be decided on evidence adduced at that time. With these observations, I do not find any merit in the Petition. **Hence, it is dismissed.**

[S. M. MODAK, J.]