

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 178 OF 2024

1. Smt. Sonabai Devba Metkari (decd.)

2. Saubai Namdev Pujari

} ..Appellants
(Orig. Defendants)

V/S.

Shri. Bhiku Sada Mali & Ors.

} ..Respondents

Mr. Laxman Kalel, *for the Appellants.*

CORAM : SANDEEP V. MARNE, J.

Dated : 22 March 2024.

P.C.:

1) By this Appeal, the Appellant challenges Judgment and Decree dated 11 December 2019 passed by the District Judge-7, Sangli in Regular Civil Appeal No. 412/2008. The first Appellate Court has dismissed Appellants' Appeal and has confirmed the Decree dated 21 October 2008 passed by the Civil Judge Junior Division, Atpadi in Regular Civil Suit No. 9 of 2004.

2) Plaintiffs filed suit for injunction restraining the Defendants from creating third party rights or selling the suit property. The cause of action for filing the Suit was alleged attempts

made by the Defendants for sale of the suit property on the strength of Defendant's name appearing in the revenue records. Plaintiff's suit was premised on sale-deed dated 21 June 1980 by which the suit property was purchased by them from Defendants' father. Defendants appeared in the suit and pleaded that the sale-deed executed by their father in favour of the Plaintiffs is bogus and was never acted upon for 25 long years. Defendants claimed ownership in respect of the suit property. On account of contest between the parties, the Trial Court framed the issue of ownership and possession and answered the same in favour of the Plaintiffs. All other objections sought to be raised by the Defendants about Mirasi tenancy and limitation etc. were repelled by the Trial Court. The first Appellate Court has dismissed Appellants' Appeal by confirming the Decree passed by the Trial Court.

3) I have heard Mr. Kalel, the learned counsel appearing for the Appellant. After having considered the submissions canvassed by him, it is seen that the Plaintiffs claimed title in respect of the suit property on the strength of sale-deed dated 21 June 1980. On the other hand, Defendants' claim in respect of the suit property is premised on the revenue entry made in their name in the year 2003. Infact, the revenue entry made in favour of the Defendants was the cause of action for the Plaintiffs to file Suit apprehending that Defendants might create third party rights in respect of the suit property. The Defendants' objection about the sale-deed being void

is rejected by the Trial Court and the execution of sale-deed is held to be proved by leading cogent evidence by the Plaintiffs. Once, Plaintiffs' title to the suit property is established and once all the objections raised by the Defendants about the sale-deed are repelled, Plaintiff's suit has been rightly decreed by granting injunction against the Defendants from creating third party rights or from alienating the suit property.

4) It is Mr. Kalel's contention that suit filed simplicitor for injunction without seeking declaration was not maintainable. However, in the present case, the simple injunction that was sought against the Defendants was not to create third party rights in respect of the suit property. Though Plaintiffs did not claim declaration of title, which in my view was not even necessary in the facts and circumstances of the present case, the Defendants created a debate by claiming ownership by questioning the genuineness of sale-deed effected in favour of the Plaintiffs. Such debate led to an enquiry by the Trial Court into the aspect of ownership and possession. Plaintiffs are held to be both, owner as well as possessor of the suit property. In that view of the matter, the suit could not have been dismissed on technical ground of not seeking declaration of title or for seeking somewhat innocuous relief of injunction against Defendants to restrain them from creating third party rights in respect of the suit property. If the Defendants believed that sale-deed executed in favour of the Plaintiffs on 21 June 1980 is illegal or void, it was for the

Defendants to take necessary steps to challenge the sale-deed. In Plaintiffs' suit for seeking injunction, the Defendants made an attempt to prove their title to the suit property and they have failed in their attempt.

5) Mr. Kalel has relied upon the judgment of the Apex Court in **The Tehsildar, Urban Improvement Trust and Anr. V/s. Ganga Bai Menariya (Dead) Through LRs. and Ors. (Civil Appeal No. 722 of 2012)** decided on 20 February 2024. Though Mr. Kalel has cited the judgment, he was not able to point out the exact ratio of the judgment. Beyond reading the facts and issues framed by the Trial Court therein, Mr. Kalel was unable to invite attention of this Court to the exact ratio of the Apex Court in the judgment. In absence of any assistance from the learned counsel, this Court is made to go through the judgment to find out the ratio laid down therein. The judgment is relied upon possibly in support of the contention that when there is dispute about title of the property, suit for injunction simpliciter cannot be filed. In paras-21 and 21.1 of the judgment, the Apex Court has held as under:

21. In the light of the aforesaid stand and the evidence led on record by the appellants-defendants, it was incumbent on the respondents to have proved their title on the land, which they failed to establish. As per the stand of the appellants, the respondents were encroachers upon the land for which notice under Section 92A of the 1959 Act was issued to them. The same was replied to by the respondents stating therein that they have patta executed in their favour by the Gram Panchayat.

21.1 Further a suit simpliciter for injunction may not be maintainable as the title of the property of the plaintiff/respondent was disputed by the

appellants/defendants. In such a situation it was required for the respondent/plaintiff to prove the title of the property while praying for injunction. Reference can be made to the judgment of this Court in *Anathula Sudhakar v. P. Buchi Reddy (Dead) by Lrs. and ors.*

6) In *Tehsildar, Urban Improvement Trust* (supra), the Plaintiff therein claims purchase of the suit property from Gram Panchayat whereas Defendants question such purchase pleading that the Gram Panchayat was not competent to sell or grant lease in respect of the suit property as the same was earmarked for grazing cattle. The Plaintiff therein made attempt to prove grant of lease by the Gram Panchayat in the year 1959. However, no witness was examined who could prove the said lease. Thus Plaintiffs' attempt to prove the lease before the Trial Court failed. It is in the light of the above factual position that the Apex Court has made observations in paras-21 and 21.1 of the judgment. In the present case, the Plaintiffs have proved execution of sale-deed by Defendants father in their favour and on the contrary, the Defendants/Appellants have failed in their attempt to prove that the sale-deed executed by their father is void. In that view of the matter, reliance of Mr. Kalel on the judgment of the Apex Court in *Tehsildar, Urban Improvement Trust*, is totally misplaced.

7) Considering the overall conspectus of the case, I am of the view that no substantial question of law is involved in the Appeal. The Second Appeal is **rejected**.

8) With rejection of Appeal, Interim Application does not survive. The same also stands disposed of

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[SANDEEP V. MARNE, J.]