

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6519 OF 2023

Rajendrabappu Shankar Kumkar & Ors. .. Petitioners

Versus

Yashwant Dharma Gaikwad (Maang Garudi) &
Ors. .. Respondents

.....

- Mr. Marazban K. Irani for Petitioners
- Mr. Sachin S. Punde for Respondent Nos. 1, 2, 4 & 5

.....

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 12, 2024

P. C.:

1. Heard Mr. Irani, learned Advocate for Petitioners and Mr. Punde, learned Advocate for Respondent Nos. 1, 2, 4 & 5.

2. Present Suit is filed by the Plaintiffs for seeking cancellation of seven sale deeds; the principal sale deed being sale deed dated 16.07.1971. Admittedly it is a registered sale deed under registration No. 1725/1971. So also cancellation is sought of all subsequent 7 sale deeds dated 20.03.1995, 10.01.2007, 11.04.2008, 15.10.2010 & 27.06.2014 in respect of the suit property which are all registered sale deeds. Suit is filed on 15.02.2018. Learned Trial Court while passing the impugned order in the Application filed under O. VII, R. 11, admittedly holds that the subject matter of this suit is sale deed dated 16.07.1971. Perusal of the suit plaint in paragraph Nos. 6 to 16

reveals that the aforementioned sale deeds were in fact according to Plaintiffs admittedly executed by the predecessor-in-title of the Plaintiffs but in 2012 when the Plaintiffs had sought information with respect to execution of the sale deed dated 16.07.1971 from their father as to whether the father had indeed sold the land or not, at that time, father of Plaintiffs informed the Plaintiffs that he had not sold the land and he did not have any reason for sale of the land. The first question therefore would arise before the Court is as to why did the father remain quiet if post 1971 the suit land was transacted by another registered sale deed in 1995, thereafter in 2007, thereafter in 2008 and thereafter in 2010 before the alleged conversation between Plaintiffs and their father took place. Further there was no need and necessity even for the Plaintiffs to remain quiet all this while. This did not stop here. The suit land is once again transacted by a further registered sale deed on 27.06.2014. Admittedly mutations are carried out. All 15 subsequent purchasers are Defendants in the suit proceedings.

3. In the above background, suit seeks declaration alongwith cancellation of all above seven registered sale deeds. Defendants being aggrieved filed Application under O. VII, R. 11 of the CPC dated 03.07.2018 for dismissal of the suit plaint as also for seeking compensatory costs. Learned Trial Court while rejecting that

Application held that the Court would consider the issue of valuation of the suit land and limitation being mixed questions of law and facts and they would be decided only after recording the evidence, rather it is stated that after recording detailed evidence the actual facts will come before the Court. Learned Trial Court held that subject matter of the suit is sale deed dated 16.07.1971 and Plaintiffs have paid court fees on that sale deed and only after the trial is over the issue of payment of deficit court fees shall be considered if so required. Apart from that, no other reasons are given in the impugned order.

4. It is shocking for the learned Trial Court to give the aforementioned findings in the impugned order in the facts of this case. The facts in this case are extremely gross. On the face of it, there are 7 registered sale deeds between the parties for the suit property. All details are mentioned in the plaint.

5. Mr. Punde would make an earnest effort to support the impugned order and has drawn my attention to the reasons contained in paragraph No. 17 as also the fact that only pursuant to the said reasons as mentioned above about the conversation between Plaintiffs and their father, Plaintiffs desired to take opinion from the handwriting, fingerprint and forensic expert and obtain a report from a private handwriting expert who by his report dated 21.05.2012 opined that after studying the finger prints, he was of the opinion that

there was a difference as observed by him. It immediately needs to be mentioned here that this report though obtained on 21.05.2012, Plaintiffs still remained quiet until 15.02.2018 to file the suit proceedings. Review Petition was filed under Exh. 89 by four aggrieved Defendants which is at Exh. N, page No. 117 of the Writ Petition. Though the prayer in the Review Petition was for allowing the Defendants to give an opportunity of being heard before framing any preliminary issue and the Defendants also sought review of the order dated 11.04.2019. Learned Trial Court held that the previous order was passed by his predecessor Judge considering the material available on record and he did not find any error on the face of record to consider the same in review and dismissed the Petition. Being aggrieved with the twin orders dated 11.04.2019 and 13.01.2023, present Writ Petition is filed.

6. Cause title of the suit plaint shows that there are 15 Defendants. All these Defendants are subsequent purchasers of the suit property by virtue of the seven registered sale deeds. Fortunately Plaintiffs have given all details of all registered sale deeds in the suit plaint itself. That apart mutation of the revenue record has also taken place. This ought to have been informed to the learned Trial Court to determine the Application under O. VII, R. 11 of the CPC. I am of the clear opinion that such suit proceedings should be nipped in the bud in the

first instance itself. Apart from the fact that there is not only gross delay, it is seen that substantial rights of subsequent purchasers who are arrayed as Defendants in the Suit are affected. Rather than dismissing the suit at the threshold itself, the learned Trial Court has passed the impugned order dated 11.04.2019 which is clearly unsustainable in law. The said order is quashed and set aside. Application filed below Exh. 66 under O. VII, R. 11 is allowed and the Suit stands comprehensively dismissed with exemplary costs of Rs. 10,000/- to be paid by the Plaintiffs to Kirtikar Law Library, High Court, Mumbai within a period of two weeks from today. Receipt for payment shall be placed on record of this Petition. Costs are awarded in view of the fact that Application below Exh. 66 filed under O. VII, R. 11, Defendants have prayed for compensatory costs to be granted. It is reiterated that the Suit is squarely barred by the law of limitation and is not maintainable at all more so in view of the specific reasons mentioned in paragraph No. 17 of the suit plaint. Once the rights of the original owner of the land stood legally extinguished by virtue of the registered transaction i.e. registered sale and new rights are created in favour of the Defendants, it cannot lie in the hands of the successor in title of the original owner to file such a suit proceedings. There is absolutely no continuing cause of action in the present case which would enure to the benefit of the Plaintiffs to maintain the

present suit in 2018. Completely unwarranted reliefs have been sought for in the facts of the present case for seeking to set aside seven registered sale deeds which are referred to herein above. Such an approach should not be permitted by the Civil Court. Impugned order dated 11.04.2019 is quashed and set aside. Application under O. VII, R. 11 succeeds and stands allowed by this Court. It shall be open to the Plaintiffs to adopt any appropriate remedy available to the Plaintiffs strictly in accordance with law.

7. With the above directions, Writ Petition is allowed and disposed.

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[MILIND N. JADHAV, J.]

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signed by
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