

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.676 OF 2022
WITH
INTERIM APPLICATION NO.19241 OF 2022
IN
SECOND APPEAL NO.676 OF 2022

All Villagers of Mouje Kondhawali
Tal. Velha, Dist. Pune, represented by ...Appellant
1) Nathu Balu Karanjkar

Versus

Vilas Kisan Dhankawade and Ors. ...Respondent

...

Mr. V.S. Talkute *for the Appellant.*

Mr. Jaydeep Deo *for Respondent Nos.1 and 2.*

CORAM : SANDEEP V. MARNE, J.

DATED : 23 APRIL 2024.

PC:

1. By this appeal, the Appellant challenges Judgment and Decree dated 18 July 2022 passed by the District Judge-4, Pune, dismissing Regular Civil Appeal No.321 of 2015 and confirming the Decree dated 26 February 2015 passed by the Second Jt. Civil Judge, Junior Division in Regular Civil Suit No.5591 of 2012. The Trial Court has proceeded to dismiss the Suit filed by the Plaintiff-Appellant.

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2. The Plaintiff-Appellant filed Old Special Civil Suit No.324 of 2004, which was renumbered as Regular Civil Suit No.5591 of 2012 seeking a declaration that two sale deeds dated 22 July 2003 executed between Defendant Nos.5 to 12 and Defendant Nos.1 to 4 as well as Sale Deed dated 18 November 2010 executed in favour of Defendant No.13 are null and void. The Plaintiff also sought injunction against Defendants from entering upon the Suit lands and disturbing Plaintiff's possession. The Trial Court proceeded to dismiss the suit by Decree dated 26 February 2015 and the first Appellate Court has confirmed the Trial Court's Decree.

3. I have heard Mr. Talkute, the learned counsel appearing for the Appellant and Mr. Deo, the learned counsel appearing for Respondent Nos.1 and 2.

4. Plaintiff's Suit was premised on Sale Receipt (Kharedi Pavti) dated 12 December 1953 executed by the Vendors in favour of the Plaintiff / "All villagers of Mouje-Kondhawali, Taluka-Velha. District -Pune". According to the Sale Receipt, the Suit land was agreed to be sold to the Plaintiff. The sale deed was not executed at the relevant time on account of the land being Mahar Watan Inam Land. It was agreed that after obtaining an order of regrant, the sale deed was to be executed in favour of the Plaintiff. According to the Plaintiff, the Plaintiff's Association paid an amount of Rs.16,000/- out of total consideration of Rs.32,000/- and accordingly the suit land was put in possession of the Plaintiff's Association on 12 December 1953.

5. However, perusal of the prayers made in the Suit would indicate that the Plaintiff did not seek prayer for specific performance of Sale Receipt dated 12 December 1953. Without seeking specific performance of the said Sale Receipt, which is in the nature of Agreement for sale, straightaway challenge was raised to the sale deeds executed on 22 July 2003 and 18 November 2010. Appreciating this difficulty, Mr. Talkute would continue to press prayer clause(c) in the plaint in which, the Plaintiff sought an order of injunction against Defendants from disturbing its possession.

6. Mr. Talkute would submit that Plaintiff's possession is continuous and undisturbed from 12 December 1953 and that it is entitled to protect its possession until recovery by following due process of law. He would rely on Section 53A of the Transfer of Property Act, which reads as under:-

“53A. Part performance.—Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract, and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract,

then, notwithstanding that where there is an instrument of transfer, that the transfer has not

been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.”

7. In my view, provisions of Section 53A of the Transfer of Property Act would not be attracted in the present case as the Suit was not filed for seeking specific performance of the Sale Receipt dated 12 December 1953. To this, response of Mr. Talkute is that protection of possession under Section 53A of the Transfer of Property Act can be sought even in a Suit where no prayer for specific performance is made. Even if Mr. Talkute is correct in contending so, Plaintiff still cannot get away with the fact that there is no averments in the plaint that Plaintiff performed or was willing to perform its part of the contract in the plaint. This is a requirement under Section 53A of the Transfer of Property Act, which is admittedly not fulfilled in the present case. In my view, Plaintiff is not entitled to protection of possession under Section 53A of the Transfer of Property Act.

8. Faced with this situation, Mr. Talkute would alter his line of attack and would submit that even if Plaintiff's possession in

respect of the suit land is assumed in capacity as a trespasser, still the possession cannot be disturbed without following the process of law. Mr. Talkute has submitted that by way of Sale Receipt dated 12 December 1953, possession of the Suit property was undoubtedly handed over to Plaintiff Association and that therefore, the Defendants in the Suit ought to have filed a Suit for recovery of possession from Plaintiff and till such Suit is filed and orders are passed therein, possession of Plaintiff cannot be disturbed. He would therefore submit that the Trial and the first Appellate Court have erred in denying order of injunction in favour of Plaintiff and against Defendants. Here again, there is difficulty for Mr. Talkute. The Suit land is Mahar Watan Inam Land, governed by the provisions of Maharashtra Inferior Village Watans Abolition Act, 1959 (Watans Abolition Act). It appears that the original Vendors obtained an order of regrant under Section 6 of Watans Abolition Act and paid the amount towards regrant on 20 March 1963. Thereafter mutation entry was effected on 31 July 1971 in the name of original vendors showing possession of the suit property by them.

9. Mr. Talkute would submit that mere passing of an order of regrant under Section 6 of the Watan Abolition Act does not act as a bar on jurisdiction of Civil Court for granting an order of injunction. He submits that under the provisions of the Watans Abolition Act, if an unauthorised person is found to be in possession of Watan land, proceedings are required to be filed under Section 9 of the Watans Abolition Act for eviction of such an unauthorised

person. He submits that till such proceedings under Section 9 are filed and orders are passed therein, Plaintiff Association is entitled to protect its possession. Mr. Talkute submits that mere passing of an order of regrant does not amount to disturbance of Plaintiff's possession until appropriate orders are passed either by Court or Authority under the provisions of Watans Abolition Act for recovery of possession from Plaintiff Association. I am unable to agree. The statutory scheme of Watans Abolition Act is such that on the day of resumption of the land, either Watan holder himself is in possession of the land or same is in possession of an unauthorised person. If Watan holder is found to be in possession of Watan Land, an order of regrant is to be passed under Section 6 of the Act. On the other hand, if an unauthorised person is in possession of the Watan land, the Watan holder is required to file an application under Section 9(1) for eviction of such an unauthorised person. In such a case the unauthorised holder has a remedy of seeking an order of regrant in his name, if he proves that he has made investment in the land and that he is entitled to protect the eviction and seek an order of regrant. This is the statutory scheme of Watans Abolition Act, which does not contemplate that after an order of regrant is made under Section 6, there can ever be any unauthorised holder in respect of the Watan land. If Plaintiff Association believes that order of regrant under Sections 6 has been erroneously granted ignoring the fact that the Suit land was possessed by Plaintiff Association as on the date of resumption, it is for Plaintiff Association to challenge said order of regrant passed under Section 6 of the Act. The Act does not recognise the concept, where after making an order of regrant under Section 6 in the name of the

Watan holder, the land can still remain in possession of an unauthorised holder. The Act also does not contemplate eviction of unauthorised holder after an order of regrant is made under Section 6 of the Act. On the contrary, order of regrant made under Section 6 of the Act postulates possession of the land by the original holder.

10. In my view therefore, passing of order of regrant under Section 6 of the Watans Abolition Act is on a presumption that Plaintiff Association was not in possession of the Suit land on the day of resumption. The Trial and the first Appellate Court have therefore rightly proceeded on the presumption that Plaintiff Association is not in possession of the Suit land. In my view therefore, even possession of the Suit land as a trespasser is not proved by the Plaintiff Association. The Trial Court has rightly rejected the order of injunction. I am therefore of the view that no question of law, much less substantial question of law, is involved in the appeal. The Second Appeal is accordingly rejected.

11. After the order is pronounced, Mr. Talkute seeks continuation of order of status-quo granted by order dated 14 September 2022. Mr. Deo would oppose the prayer.

12. Considering the findings recorded in the order, I am not inclined to continue the order of status-quo. The request is accordingly rejected.

13. In view of disposal of the Second Appeal, the interim application does not survive and accordingly stands disposed of.

[SANDEEP V. MARNE, J.]