

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1814 OF 2024

Chhaya Tanhaji Ahinve & Ors.

.. Petitioners

Versus

Kamal Kondibhaav Thikekar & Ors.

.. Respondents

.....

- Mr. Anil D. Joshi for Petitioners
- Mr. Ajay A. Joshi for Respondents

.....

CORAM : MILIND N. JADHAV, J.

DATE : JUNE 24, 2024

P. C.:

1. Heard Mr. Anil Joshi, learned Advocate for Petitioners and Mr. Ajay Joshi, learned Advocate for Respondents.

2. In this case, there are two concurrent orders. The order dated 26.04.2022 is passed by the learned Trial Court while deciding injunction Application below Exh. 5 along with Ex. 17 in RCS No. 407 of 2021. Suit is filed by Plaintiffs (Respondent Nos. 1 and 2 herein) seeking declaration of ownership on the basis of registered sale deed dated 31.12.2001 in respect of suit land bearing CTS No. 791/12 situated at Otur, Amirghat, Taluka Junnar, District Pune. It is Defendants' case that they have undertaken construction on land bearing CTS No. 791/12 which according to Defendants does not belong to the Plaintiffs. Learned Trial Court on the basis of rival pleadings framed appropriate points for determination with respect to

prima facie case, balance of convenience and hardship that will be caused to the parties. Learned Trial Court considered the registered sale deed dated 31.12.2001 whereby the suit properties were shown to be purchased by Plaintiff No. 1 wherein Plaintiff No. 2 was a witness to the sale deed and since then according to Plaintiffs, Plaintiffs being in possession of the said land no one has objected to Plaintiffs' possession. Contention that has arisen between the parties is with respect to a road which is situated adjacent to the Plaintiffs' land and which is situated from east to west according to the Plaintiffs. Plaintiffs relied upon a map dated 16.05.2021 to show the existence and location of the said road. Consideration which weighed with the learned Trial Court to allow the injunction application below Exh. 5 was *prima facie* based upon the registered sale deed dated 31.12.2001 and more specifically the four boundaries mentioned in the said sale deed which was in consonance with the map produced by the Plaintiffs. It is further seen that before filing of the Suit proceedings, parties i.e. Plaintiffs and Defendants had disputed the existence and location of the said road adjacent to their respective lands as to whether it was from east to west or from north to south. Both parties appeared before Village Dispute Resolution Committee and a private Surveyor was employed to prepare the map. Before the learned Tahsildar both parties appeared along with their respective evidence

and witnesses. Considering the rival contentions, Tahsildar was unable to decide the dispute between the parties and therefore directed the parties to approach the civil Court for a decision on their dispute. While passing the order dated 01.11.2021, Tahsildar held that the parties cannot on their own appoint a Court Commissioner and seek to refer to and rely upon the map prepared by the said Court Commissioner / private Surveyor. For determination of the situation and location of the disputed road adjacent to their respective lands, dispute was also raised before the learned Trial Court with respect to the map concerned which was prepared by the parties. One of the principal issue was that there was a complete mismatch with the boundaries of the properties held by the Plaintiffs as well as Defendants. Incidentally it is seen that both parties have filed before the learned Trial Court at the time of hearing of Exh. 5 Application their respective tax receipts and electricity bills in order to show their possession in respect of the disputed suit property. Be that as it may, learned Trial Court considered the entire documentary evidence as also various other incidents of evidence, *inter alia*, pertaining to panchnama, the sale deed as also the evidence produced by the parties to show their possession over the disputed land. After considering the evidence learned Trial Court held that on the basis of the documentary evidence filed by the Plaintiffs i.e. the map issued by TILR, Junnar

relating to CTS No. 791 as well as the village map of Kasbe Otur village and after comparing the said map with the map filed by the Defendants, *prima facie*, possession over the disputed properties was ascertained to be with the Plaintiffs as per the registered sale deed. In that view of the matter, learned Trial Court opined that the Plaintiffs were entitled to injunction in respect of the suit land and therefore Defendants were restrained from causing any disturbance or encroachment on disputed property namely Gat No. 791/12 admeasuring 0 H 19 R and land Gut No. 789/4B admeasuring 0 H 22.5 R situated at Otur, Amirghat, Taluka Junnar, District Pune. In MCA Proceedings, learned District Court once again considered the case of both the parties and narrowed down on the dispute between the parties as to whether the disputed property goes from north to south direction or whether it was in the east to west direction as contended by the respective parties. Learned District Court also considered the proceedings before the Village Dispute Resolution Committee as also all other documentary evidence and arrived at a *prima facie* opinion that the reasons given by the learned Trial Court on the basis of the registered sale deed were to be held *prima facie* in favour of the Plaintiffs and in that view of the matter, Plaintiffs had every right to protect their properties from encroachment. Upon the basis of the reasons given by the learned Trial Court, the learned

District Court upheld the said reasons and dismissed the Appeal of the Defendants by judgment & order dated 24.11.2023.

3. Learned Advocate for Petitioners has drawn my attention to both the impugned orders and would submit that the learned Trial Court ought to have considered the non-joinder of necessary parties as an important issue and not have allowed injunction. This submission made on behalf of the Petitioners cannot be countenanced since the defence of non-joinder may have no relevance in the present case in view of the fact that Plaintiffs are aggrieved with Defendant Nos. 1 to 7's actions with respect to Gat No. 791/12 only. That apart, learned Advocate for Petitioners would submit that there is an incorrect recording of the fact that Suit is simplicitor for injunction. Once again such an incorrect recording cannot go to the root of the matter since the Suit is filed by Plaintiffs for seeking a declaratory decree in respect of ownership of Plaintiffs under the registered sale deed dated 31.12.2001 and it also seeks injunction against Defendants.

4. In view of concurrent findings given by the learned Trial Court and upheld by the learned District Court, I am not inclined to substitute my findings since the decisions which have been arrived at by both the learned Courts below is on the basis of *prima facie*

material considering the documentary evidence and which has been delineated in both the orders as also in my order herein above.

5. In view of the above, the orders dated 26.04.2022 and 24.11.2023 are sustained and upheld.

6. Since the Suit is filed in the year 2021, learned Trial Court is requested to dispose of RCS No. 407/2021 as expeditiously as possible and in any event within a period of one year from today strictly in accordance with law and after allowing both the parties to lead their respective evidence. Parties shall co-operate with the Trial Court and shall not seek unnecessary adjournment unless it is absolutely necessary in case of any urgency or emergency.

7. Learned Trial Court shall not be influenced by any of the observations made in the impugned orders as well as this order while deciding the Suit proceedings.

8. All contentions of the parties are expressly kept open.

9. This Court has not given any imprimatur on the issue of possession of either of the parties with respect to the suit property and it shall be open for both the parties to prove their respective case on possession on the basis of their independent evidence.

10. With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]