

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5157 OF 2024

Vishal Bhagwan Sutar .. Petitioner
Versus
Radanika Madhukar Pradhan and Ors. .. Respondents

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- Mr. Shekhar Jagtap a/w. Mr. Venkatesh Shinde, Advocate for Petitioner.
 - Mr. Akshay Petkar a/w. Mr. Aditya Nair, Mr. Aniket Malu and Mr. Pranav Shah, Advocates for Respondents.
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CORAM : MILIND N. JADHAV, J.

DATE : JUNE 14, 2024.

P.C.:

1. Heard Mr. Jagtap, learned Advocate for Petitioner and Mr. Petkar, learned Advocate for Respondents.

2. Present Writ Petition takes exception to the twin orders passed below Exhibit “5” by the learned Trial Court and upheld by the learned District Court rejecting the Application of the Plaintiff for interim relief.

3. Briefly stated, the dispute between the parties is related to the property nomenclatured as Suit property 1B as described in the Suit plaint which is a triangular portion of *Milkat* No.514 ad-measuring 225 square feet appended to the properties belonging to and held by the Plaintiff and the Defendants separately. It is the

contention of the Plaintiff that by virtue of the long standing mutation entry No.7964, this triangular portion of Suit property namely 1B belongs to the Plaintiff.

4. Hence, a declaratory Suit has been filed seeking a declaration and injunction to that effect. When injunction is prayed for, it is admittedly on the basis of the Plaintiff having possession of the Suit property. This is argued by Mr. Jagtap that Plaintiff is in possession of the Suit property.

5. However, the averments made in the Suit plaint are not in so many specific words and terms. The cause of action according to the Plaintiff arose sometime in the year 2022 when the Plaintiff realised that the Suit property namely property 1B was wrongfully transacted by the predecessor-in-title of the Plaintiff namely his father and uncle with the Defendants. Admittedly, it is seen that the Defendants is having two registered sale deeds of the year 1987 in respect of the Suit property as also larger property held by the Defendants alongwith the boundaries of the said property. It is seen that there is a shed which is built on the contentious property, namely Suit property 1B to which the Plaintiff has laid a claim in paragraph No.19 of the Suit plaint. The averments made by the Plaintiff are that when the Plaintiff visited the Suit property 1B, representatives of Defendants restrained Plaintiff from entering on to the Suit property and threatened the Plaintiff,

resultantly leading to the filing of the present Suit proceedings seeking a declaration.

6. *PER CONTRA*, Mr. Petkar, learned Advocate appearing on behalf of the Defendants would claim that the Defendants are in possession of the Suit property. I have perused both the orders passed below Exhibit “5” by the learned Trial Court as well as learned District Court. I have also equally impressed upon Mr. Jagtap, learned Advocate for the Plaintiff that substitution of my view for the views and opinions returned by the learned Trial Court as also by the learned District Court when facts are more less admitted, is not possible. This Court cannot take a different view on the *prima facie* findings of facts. What Mr. Jagtap would contend is that the contentious Suit property 1B is in possession of the Plaintiff which is refuted vehemently and strongly by Mr. Petkar, learned Advocate for the Respondents.

7. It is seen that in so far as ingress and egress to the respective properties are concerned, they are approachable by a different road and the Suit property 1B is independent.

8. In that view of the matter, I have impressed upon Mr. Jagtap that it would be in the fitness of things, if the Plaintiff steps into the witness box and proves his case strictly in accordance with law.

9. The fact as to whether the Plaintiff is entitled and is in possession of the Suit property 1B by virtue of the mutation entry will have to be proved by the Plaintiff by leading cogent evidence.

10. In view of the above, I am of the clear opinion that the reasons given by the learned Trial Court in its Exhibit “5” order deserve to be sustained which is on the basis of *prima facie* reading of the pleadings and evidence placed before the Court. The same reasons have been upheld by the learned Trial Court while passing the MCA order and in that view of the matter, considering the balance of convenience which has been maintained by the Courts below. I am not inclined to interfere with the impugned order dated 28.02.2024. While sustaining both orders passed below Exhibit “5” by the learned Trial Court as also by the learned District Court, all that I can do is that the learned Trial Court is requested to expedite the hearing of the Suit proceedings strictly in accordance with law.

11. In view of my above observations, both the impugned orders dated 10.06.2023 and 28.02.2024 are sustained.

12. Learned Trial Court to expedite the hearing of Regular Civil Suit No.293 of 2023 as expeditiously as possible and in any event within a period of one (1) year from today.

13. It is clarified that parties shall not take any unnecessary adjournments and the Trial Court shall grant adjournment only if it is utmost necessary.

14. Parties are directed to cooperate with the Trial Court for expeditious disposal of the Suit proceedings.

15. Parties are at liberty to lead evidence. All contentions of the Plaintiff are expressly kept open before the learned Trial Court including the fact for the Plaintiff to prove that the Plaintiff is in possession of the Suit property namely property 1B.

16. Equally, Defendants shall also be at liberty to lead appropriate evidence in rebuttal to the Plaintiff's case when the Defendants' turn comes.

17. The learned Trial Court shall not be influenced by any observations and findings given in this order as also both the impugned orders as they are purely *prima facie* in nature and determine the Suit strictly in accordance with law.

18. All contentions of the parties are expressly kept open before the learned Trial Court.

19. Writ Petition stands disposed of with the above observations without interfering with the impugned orders.

[MILIND N. JADHAV, J.]

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