IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 523 OF 2024
WITH
INTERIM APPLICATION NO. 10381 OF 2024

Malhari Kisan Bhujbal And Others ...Appellants
Versus
Laxman Manohar Bhujbal And Others ...Respondents

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Mr. Jaydeep Deo for the Appellants.
Ms Dipti Thorat i/b. Mr. J. G. (Aradwad) Reddy for the Respondent No. 10

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CORAM : M. M. SATHAYE, J.

DATED : 10th DECEMBER 2024

P.C.:

1. Learned Counsel Mr. Deo for the Appellants and learned Senior Counsel Mr. Damle for the Respondent No. 10 were heard finally on 26/11/2024 and matter is placed today for passing order.

2. This is an appeal filed challenging the impugned order dated 26/04/2024 passed by 9th Jt. Civil Judge Senior Division, Pune below Exhibit 5 in S.C.S. No. 1723/2022. By the said impugned order, the Application filed by the Appellants/Plaintiffs for restraining the Respondent Nos. 1 to 10 from disturbing the possession of the Appellants and further restraining them from creating 3rd party interest or encumbrances in the suit property, is rejected. Land admeasuring 0 H - 44 R in S. No. 7/3 (old) and S. No. 7/2 (new) at Village Wakad, Tal. Mulshi, Dist. Pune is the suit property.

3. Learned Counsel for the Appellants submitted as under. That since the year 1933 the suit land was standing in the revenue records in the name of

Plaintiffs' father – one Mr. Krushana @ Kisan Genu Bhujbal. That in December 2021, the Appellants received notice from the Municipal Corporation about acquisition of part of the suit property for the purpose of road and at that time the Appellants came to know that 27 R land out of the suit property is standing in the name of the Respondent No. 10-Developer and remaing 17 R land was standing in the name of the Respondent Nos. 1 and 6. That on obtaining copies of revenue records, the Appellants came to know that in the year 1986, under Mutation Enrty No. 2983, an effect of sale deed dated 01/07/1924 is taken, which is executed by the Plaintiffs' grandfather late Genu Sakharam Bhujbal in favour of Ganpat Tukaram Bhubal. The said mutation entry was effected in the name of the father of the Respondent Nos. 1 & 6 - Late Manohar Sopan Bhujbal alongwith his brothers and sisters. That the said father of Respondent Nos. 1 & 6 alongwith brothers and sisters have immediately carried out partition u/s. 85 of the Maharashtra Land Revenue Code vide mutation entry no. 3052 in which the suit property was allotted to the share of father of the Respondent Nos. 1 & 6. That name of the Appellants' predecessors were deleted from the revenue records illegally. That the Appellants came to know that father of the Respondent Nos. 1 & 6 as well as the Respondent Nos. 1 to 9 executed development agreement and power of attorney in respect of 27 R land out of the suit property in favour of the Respondent No. 10 on 30/11/2007. That the sale deed dated 26/03/2021 has been executed thereafter in favour of the Respondent No. 10.

4. Learned Counsel for the Appellants submitted that disputing all these transactions, the present suit is filed in which interim application is taken out below Exhibit 5. It is urged that mutation entry does not give any title to the Respondent Nos. 1 to 9 and therefore, neither the Respondent Nos. 1 to 9 nor the Respondent No. 10 claiming to have received part of the suit

property for development through them, have any right to utilize the suit land or construct thereon. It is submitted that the sale deed dated 01.07.1924 is not forthcoming or produced on record and as such, its cognizance taken in the year 1986 while effecting Mutation Entry no. 2983 cannot give any rights to the Respondents.

5. Learned Senior Counsel appearing for the Respondent No. 10 Developer, on the other hand submitted that from the revenue record it is clear that in the year 1924, the suit property was sold by Genu Sakharam Bhujbal (predecessor of the Appellants) to Ganpat Tukaram Bhujbal (predecessor of Respondent Nos. 1 to 9) and in partition, the said property was allotted to the Ganpat Bhujbal. It is submitted that before entering into the transaction with the Ganpat Bhujbal and other Defendants, a public notice is given and then the development agreement dated 30.11.2007 and sale deed dated 26.03.2021 have been executed in respect of the 27 R land in favour of the Respondent No. 10 by the rightful owners thereof. He submitted that the Respondent No. 10 is the bonafide purchaser and the suit is *ex facie* barred by the limitation.

6. He submitted that the Mutation Entry No. 2983 of the year 1986 is not challenged by the Appellants till the year 2022. No objections were raised to the public notice issued by Respondent No. 10. He submitted that already 177 apartments / units and 19 shops have been constructed by the Respondent No. 10 on 27 R portion purchased by Respondent No. 10, out of which 101 units have been sold under registered documents to third parties. He submits that in such facts and circumstances, the present suit is nothing but a belated effort to pressurize the Respondents including the developer to extract money. He has submitted photographs showing stage of construction on the suit property.

7. I have considered the submissions and perused the impugned order.

8. It is noted in the impugned order that as per revenue records, since 1931 to 1986 the suit property was standing in the name of the Plaintiffs' father late Krushanan Genu Mali @ Bhujbal and after 1986, vide mutation entry no. 2983, the names of the predecessors of the Respondent Nos. 1 & 6 i.e. late Manohar Bhujbal and others are recorded. It is further noted in the impugned order that from revenue record it transpires that the sale deed is executed by the predecessor of the Appellants in favour of predecessor of Respondent No. 1 & 6. It is further noted that though the Appellants claimed possession of the suit property, since 1986 the same is standing in the name of predecessor of Respondents.

9. It is rightly held by learned Trial Judge that the revenue entries as indicated above, have been acted upon since long time. Admittedly the mutation entry of 1986 is not challenged by the Appellants till 2022. Nothing is brought on record to indicate what objections were taken by the Appellants to the public notice issued by the Respondent No. 10 before entering into the development agreement in respect of 27 R portion of the suit property. Apparently, the suit is filed in July/August 2022, challenging the transactions in the year 1924 recorded under mutation entry recorded in the year 1986 and the development agreement of November, 2007.

10. Considering these dates, the suit is *prima facie* filed at the belated stage. Recording of sale deed dated 01.07.1924 under the mutation entry no. 2983 of the year 1986 is in due course of business/official procedure and nothing in brought on record, at least at this stage, to doubt said mutation entry. Therefore non production of sale deed of 1924 cannot be considered as fatal to the rights of the Respondents at this stage.

11. Learned counsel for the Appellants relied upon the judgments in **Sawarni (SMT) vs. Inder Kaur (SMT) and Others**[1] and **Prem Nath Khanna and Others vs. Narinder Nath Kapoor (Dead) through Legal Representatives and others**[2] in support of his case.

12. In **Sawarni's case (supra)**, perusal of the judgment shows that the main question involved therein was whether a person called 'Roori' was daughter of the Gurbax Singh or Inder Kaur and in that case the Appeal Court had reversed the decree of the Trial Court without examining the material on record. The Hon'ble Supreme Court was considering the dismissal of the second appeal by the High Court. In this context, in respect of one of the consideration by the High Court involving mutation in the revenue records, it was observed that mutation entry does not create or extinguish title.

13. In the case of **Premnath Kahnna (supra)**, while considering the case of adverse possession (as indicated in para 15.2 of the judgment) in case arising out of second appeal decided by High Court in which ex-parte decree was involved, the Hon'ble Supreme Court has reiterated the settled principle of law that mutation entry in revenue records does not create or extinguish the title, relying on **Sawarni's case (supra)**.

14. The present matter is at a completely different stage. No ex-parte decree or case of adverse possession is involved. The present matter is at stage of interim relief and the suit is pending. Neither the Trial Court nor this Court is considering the final effect of the mutation entry on the title of the Respondents. It is found, at least *prima facie,* that under a mutation entry no. 2983 of the year 1986, which is kept in the due course of

1 (1996) 6 SCC 223
2 (2016) 12 SCC 235.

business/official procedure by the revenue authority, it is seen that name of the Respondents' predecessors were mutated on the basis of the sale deed from Appellants' predecessors. In that view of the factual matrix as well as stage of the present proceeding being completely different, the said judgments would not advance the case of the Appellants.

15. It is not disputed that already construction on the suit property by the Respondent No. 10 is at an advanced stage and as many as 101 units from the constructions as been sold/transferred under the registered documents. In that view of the matter, the balance of convenience and irreparable loss are both in favour of the Respondents.

16. The view taken by the Trial Judge is neither perverse nor there is any error apparent on the face of record. The conclusion drawn is on the basis of the material available before it. As such no interference is required.

17. The Appeal and pending application are accordingly dismissed. No costs.

18. It is however clarified that the subject suit will be decided on its own merits, in accordance with law without being influenced by the impugned order or present order of this Court. Rival contentions of the parties on merits are kept open.

19. All concerned to act on duly authenticated / digitally signed copy of this order.

(M. M. SATHAYE, J.)