



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 6891 OF 2019

Sunil Gulabchand Saraf
Age 55 years, Occu. – Agriculturist
R/o. Madan Plot, Khamgaon,
Tah. Khamgaon, Dist. Buldhana

.. Petitioner

Versus

1. Dnyaneshwar Tulshiram Bharambe
Age 56 years, Occ. – Agriculturist
R/o. Machinderkhed, Tah. Shegaon,
Dist. Buldhana

2. State of Maharashtra,
through The Collector, Buldhana,

3. Talathi of Village Taroda
Tah. Shegaon, Dist. Buldhana

4. Umesh Purushottam Bhurje
Age – Major, Occu. Talathi,
Tah. Shegaon, Dist. Buldhana

5. Uttam Roduji Kadale (Patil)
Age 81 years, Occu. Labour,
R/o. C/o. Ramesh Uttam Kadale
House of Mohan Pophale,
Balaji Fhail, Shegaon, Tah. Shegaon,
Dist. Buldhana

6. Diwakar Uttam Kadale (Patil),
Age 47 years, Occu. Labour,
R/o. Taroda, Tah. Shegaon,
Dist. Buldhana

7. Ramesh Uttam Kadale (Patil)
Age 47 years, Occu. Labour,
R/o. Balaji Fhail, Shegaon,
Tah. Shegaon, Dist. Buldhana

.. Respondents

8. Smt. Usha Prakash Theng,
Age 44 years, Occu. Household,
R/o.Bharaj, Tah.Jafarabad,
Dist. Buldhana
9. Smt. Asha Vinod Thute,
Agedt 50 years, Occu. Household,
R/o. Adarsha Colony, Akola,
District Akola.
10. Narayan Gangaram Sharma,
Age 78 years, Occu. Agriculturist,
R/o. C/o. Ramesh Pandurang Mali,
Back side of MSEB, Venkatesh Nagar,
Shegaon, Dist. Buldhana,

.. Respondents

Mr. G.M.Kubde, Advocate for Petitioner.

Mr. A.D.Bhate, Advocate for Respondent No.1.

CORAM : ABHAY J. MANTRI, JJ.

RESERVED ON : SEPTEMBER 23, 2024

PRONOUNCED ON : NOVEMBER 27, 2024

JUDGMENT

Rule. Rule is made returnable forthwith. Heard finally, by the consent of the learned counsel, appearing for the parties.

(2) The petitioner/original plaintiff being aggrieved by the order dated 07/03/2019, passed by learned Adhoc District Judge-2, Khamgaon, (for short- '*the learned Judge*') below Exh.5 in Misc. Appeal No. 04/2017, thereby, stayed the effect and operation of the order dated 22/12/2016 passed by learned Civil Judge Sr. D. below Exh.5 in R. C. S. No.25/2016 till the final decision of Misc. Civil Appeal.

(3) The petitioner/Original plaintiff has filed suit for injunction, wherein he has moved an application for the grant of a temporary injunction under Order XIX Rules 1 and 2 of Civil Procedure Code, 1908. (for short- '*the Code*') The petitioner claims that by virtue of the Sale Deed dated 24/05/2004 executed by defendant Nos.4 and 9, he has got ownership/ possessory right over the suit property, i.e. Survey No.26, and since then, he has been in possession of the suit property. His name has also been mutated in the revenue record, and Namuna No.8 as owner and possessor. Defendants Nos.4 to 10 tried to obstruct his possession of the suit property; therefore, he has moved the application.

(4) The said application was resisted by defendants Nos.4 to 8 and 10, contending that the transaction in respect of the Sale Deed dated 20/06/1996 between defendant No.4 and his wife on the one side and defendant No.9 on the other side was purely a money lending transaction. Therefore, execution of the subsequent Sale Deed by defendants Nos.4 and 9 in favour of the plaintiff is not binding on the defendants. The said Sale Deed did not confer any title in favour of the plaintiff, and he is not entitled to any relief as prayed.

(5) Defendant No.9 filed a reply and admitted the execution of the Sale Deed dated 24/05/2004 and the ownership of the plaintiff over the suit property.

(6) The learned C.J.S.D., after considering the material on record, held that the entry in the 7/12 extract of the year 2006-2007 was in the name of the plaintiff and also in the extract of Namuna 8, denotes that the plaintiff is in possession of the suit property. Based on the Sale Deed, entry in 7/12 extract and Namuna 8, the trial Court has allowed the application and restrained the defendant Nos.4 to 10 from causing any obstruction to the plaintiff over the suit property till the decision of the suit.

(7) Being aggrieved by the said order, the original defendant, No.10, has preferred Misc. Civil Appeal before the District Court. In the Appeal, defendant No.10 has also moved an application for staying the order passed by the trial Court below Exh.5. The learned Judge vide impugned order dated 07/03/2019 stayed the said order. Being aggrieved by the said order, the original plaintiff has preferred this petition.

(8) Mr. Kubde, learned Counsel for the petitioner, vehemently contended that the learned Judge had ignored the pursis filed by the petitioner/plaintiff and erred in passing the impugned order. He further canvassed that the matter was fixed for taking steps on 05/04/2019; however, the learned Judge preponed the date and passed the impugned order on 07/03/2019 in the absence of the other respondents therein and without being heard them. Thereby caused a

miscarriage of justice. The learned Judge has not considered the document/evidence produced on record in its proper perspective and erred in staying with the order of injunction contrary to the facts on record. Therefore, he has urged for allowing the petition.

(9) Mr.Bhate, learned Counsel for respondent No.10, submitted that the order passed by the learned Judge is just and proper; therefore, no interference is required. Hence, he prayed for the dismissal of the petition.

(10) Perused the impugned order and order dated 22/12/2016 passed below Exh.5 in R.C.S.No.25/2016, as well as the record.

(11) It reveals that on 24/05/2004, defendant Nos.4 and 9 had executed a registered Sale Deed for consideration of Rs.2,60,000/- in favour of the plaintiff and by virtue of the said Sale Deed, the plaintiff has got ownership as well as possessory right over the suit property i.e. Survey No.26. It also seems that by virtue of the said Sale Deed, plaintiff's name has been mutated in 7/12 extract and Namuna 8 as a possessor of the suit property. Having considered the said fact, the learned trial Court has held that the plaintiff is in possession of the suit property and, therefore, allowed the application for temporary injunction and restrained the defendant Nos.4 to 10 from causing any obstruction to his peaceful possession over the suit property till the decision of the suit. However, the learned Judge in Misc. Civil Appeal,

without considering the said fact and documents on record, has erred in passing the order and thereby stayed the order of the trial court till the disposal of the appeal. Without assigning any cogent reason, the learned Judge stayed the order, vaguely observing that the order passed by the learned trial Court was erroneous. In fact, the learned Judge has to record the prima facie finding that who is in possession of the suit property, but without considering the said fact, has erred in passing the impugned order and, therefore, in my view, the said order is not liable to be sustained, in the eyes of the law.

(12) Having considered the aforesaid fact, in my view, it would be proper to set aside the impugned order and direct the parties to maintain the status quo till the disposal of the appeal.

(13) As such, the petition is allowed.

(14) The impugned order dated 07/03/2019 passed by the Adhoc District Judge-2 Khamgaon, below Exh.5 in Misc. Civil Appeal No.04/2017 is hereby quashed and set aside.

(15) The parties are directed to maintain the status quo till the disposal of the Misc. Civil appeal.

(16) Inform the appellate Court and the trial Court accordingly.

[ABHAY J. MANTRI, J.]

KOLHE