



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

929 WRIT PETITION NO. 2638 OF 2024

ROHINI ALIAS MOHINI YOGESH SOMWANSHI

VERSUS

GANESH DURYODHAN NAIK AND ANOTHER

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Advocate for the Petitioner : Mr. Sonavane Narendra D.
Advocate for Respondents : Mr. Shelke Devidas Rangnath

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CORAM : R.M. JOSHI, J.

DATE : 04th FEBRUARY, 2025

PER COURT :

1. This petition takes exception to the impugned order dated 07.12.2023, passed by Adhoc District Judge-2, Vaijapur, in MCA No. 20/2023, whereby passed the order passed below Exhibit 5 and 22 in RCS No. 473/2022 dated 08.03.2022, came to be set aside.
2. The District Judge has allowed the appeal filed by the original plaintiff and further allowed exhibit 5 restraining defendants from interfering into the possession of the plaintiff over the suit property.
3. The facts led to filing of the petitioner can be narrated in brief as under :

Plaintiff in RCS No. 473/2022 has filed suit for perpetual injunction against the defendants on the basis of title in respect of suit property acquired by him on the strength of registered sale deed executed by husband of defendant no. 1 / petitioner herein. The defendants appeared in the suit proceedings and filed written statement so also counter claim. In the counter claim, there is a prayer of perpetual injunction against the plaintiff restraining him from causing interference into the possession of defendants over the suit property.

4. Learned counsel trial Court passed order of status quo without recording even, *prima facie*, finding as to who is in possession of the suit property. The Appellate Court in Miscellaneous Civil Appeal set aside the said order and clamped injunction against the defendants by recording findings as to *prima facie* who is found to be in possession of suit property.

5. Learned counsel for the petitioners has drawn attention of this Court to the finding recorded by the trial Court while passing order below 5 and 22 to the effect that there is evidence to indicate that both parties are in possession of the suit property. It is his further submission that merely on the basis of the registered sale deed, no injunction can be granted in favour of the plaintiff as done by the Appellate Court. It is his submission that the defendants have specifically raised objection with regard to the validity of the sale deed and in such circumstances, the District Court was not justified in allowing application exhibit 5.

6. Learned counsel for the respondent / original plaintiff supported impugned order.

7. There is no dispute about the fact that there is a registered sale deed in respect of suit property executed by its owner in favour of the plaintiff. Though the defendants have sought to challenge the validity of the said sale deed, no declaration is sought to that effect in the counter claim. Unless the defendants challenge the sale deed and its validity, it may not be open for the defendants to seek any other relief of simplicitor injunction.

8. Perusal of order passed by trial Court indicates that status quo is granted without *prima facie* holding who is in possession of suit property. Passing such order is wholly unjustified. Needless to say that such order of status quo would not solve the dispute but would lead to escalation thereof and ultimately to multiplicity of proceedings. The order of trial Court, therefore, was not sustainable.

9. In the light of these facts, so also in view of the fact that the registered deed carries prima facie presumptions unless rebutted. Thus, at this stage it can be said that there is a registered sale deed wherein there is recital of handing over of the possession of the suit property by the original owner in favour of the plaintiff. There cannot be and need not be any other evidence to *prima facie* hold possession of plaintiff over the suit property.

10. In such circumstances, this Court finds no perversity in the order impugned. Petition is dismissed.

(R.M. JOSHI, J.)