

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7078 OF 2023

Pravin Hanmant Patil and Others ...Petitioners

vs.

Hanmant Ramchandra Shinde and Others ...Respondents

Mr. Kalpesh Patil, for the Petitioners

Mr. Vaibhav Gaikwad, for the Respondents.

CORAM : N. J. JAMADAR, J.

DATE : MARCH 19, 2025

P.C:

1. Rule. Rule made returnable forthwith and, with the consent of the learned counsels for the parties, heard finally.

2. This petition under Article 227 of the Constitution of India calls in question the legality, propriety and correctness of the judgment and order dated 9th November, 2022 passed by the learned District Judge, Karad in MCA No. 54 of 2022, whereby the appeal preferred by the petitioners against an order of temporary injunction passed by the learned Civil Judge, Karad in RCS No. 145 of 2022 came to be dismissed.

3. Ganpati Daulata Sapkar (Patil), the predecessor in title of the petitioners / defendants was the holder of agricultural land bearing Gat No. 697 admeasuring 26R. Ganpati mortgaged the said land (suit property 1A) to Ramchandra Shinde, the predecessor in title

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of the respondents/ plaintiffs, under an un-registered Mortgage Deed dated 6th June, 1992. The term of mortgage was 21 years and the predecessor in title of the defendants accepted Rs. 1,21,000/- by way of mortgage money thereunder.

4. It is the claim of the plaintiffs that Shrimant Ganpati Patil, the predecessor in title of the defendants, thereafter executed a conveyance in favour of Hanmant Ramchandra Shinde, the predecessor in title of the plaintiffs, of an area admeasuring 13R out of the said mortgaged property (suit property 1B) under registered Sale Deed dated 5th June, 2013. The rest of the property i.e. 13R land (suit property 1C) continued to be in possession and cultivation of the plaintiffs in the capacity of the mortgagees. In the month of January, 2022 the defendants caused obstruction to the possession of, and cultivation by, the plaintiffs of the suit property 1C. The defendants threatened to forcibly dispossess the plaintiffs. Therefore, the plaintiffs were constrained to institute a suit for perpetual injunction in respect of the suit property 1C.

5. In the said suit, the plaintiffs filed an application for temporary injunction. By an order dated 30th June, 2022, the learned Civil Judge, Karad was persuaded to allow the application observing, inter alia, that there was ample material to show that the plaintiffs were in possession of the suit property 1C. The

unregistered Mortgage Deed could be looked into for the collateral purpose.

6. The petitioners carried the matter in appeal before the learned District Judge, Karad. By the impugned order, the appeal came to be dismissed. The learned District Judge found no error in the exercise of discretion by the trial Court and, resultantly, the appeal came to be dismissed by the impugned order.

7. Mr. Kalpesh Patil, the learned counsel for the petitioners, would urge that the Courts below committed error in returning a finding that the plaintiffs were prima facie in possession of the suit property 1C. By placing reliance on the Sale Deed in respect of the suit property 1B executed on 5th June, 2013, Mr. Patil strenuously submitted that had the mortgage been executed by the predecessor in title of the defendants in favour of the predecessor in title of the plaintiffs, the said fact must have found reference in the Sale Deed and it would have been mentioned that the possession of the said property 1B with the defendants, as a mortgage, was confirmed thereunder. On the contrary, there is no reference to the property 1C as the mortgaged property in the boundaries of the suit property 1B, sold under the said Sale Deed.

8. Secondly, Mr. Patil urged that the reliance on the letters and sugarcane supply receipts by the Courts below to infer the factum of

possession was also unjustified. The letters addressed to the Revenue Authorities were in the context of suit property 1B and not 1C. No inference of mortgage could have been drawn on the basis of those letters.

9. Mr. Vaibhav Gaikwad, the learned counsel for the respondents, supported the impugned order. It was submitted that the Courts below have recorded concurrent prima facie findings. Those findings are not open for interference in exercise of supervisory jurisdiction. In addition to unregistered Deed of Mortgage, according to Mr. Gaikwad, the letters dated 2nd March, 2016, addressed by the defendants to the Revenue Authorities contain a clear and categorical admission that the entire land has been in the cultivation of the defendants as mortgagees. Therefore, no fault can be found with the impugned orders, urged Mr. Gaikwad.

10. To start with, the limits of writ jurisdiction. This Court can not re-appreciate the evidence nor the errors on facts and law are open for correction. It is the patent error in exercise of jurisdiction by the Courts below which can be corrected by this Court in exercise of the supervisory jurisdiction. Where the Courts below have recorded concurrent finding of facts, this Court would be loath to interfere with such finding of fact if they are based on objective material.

11. The Courts below have found that predecessor in title of the

defendants had executed a Mortgage Deed in favour of the predecessor in title of the plaintiffs, albeit unregistered. Nonetheless, invoking the proviso to Section 49 of the Indian Registration Act, 1908, the Courts were persuaded to consider the said unregistered Mortgage Deed for collateral purposes. It is trite that an instrument which is required to be compulsorily registered under section 17 of the Registration Act, 1908, can be looked into as evidence of collateral transaction not required to be effected by a registered instrument.

12. Ascertainment of the nature of possession of a party, who claims under such unregistered instrument, is a recognized instance of a collateral purpose. Therefore, the Courts below were justified in looking into the unregistered Mortgage Deed to ascertain the prima facie nature of possession of the plaintiffs over the suit property 1C.

13. The submission of Mr. Patil that, absence of reference to the Mortgage Deed in the Sale Deed in respect of the suit property 1B is fatal to the case of plaintiffs, appears attractive at the first blush. However, on a close scrutiny, the submission does not hold much ground as it is not a peremptory requirement that parties must refer to previous transaction when the jural relationship subsequently alters on account of transaction of another nature.

Therefore, the absence of reference to unregistered Mortgage Deed in the Sale Deed, need not necessarily lead to an inference that there was no mortgage.

14. Apart from unregistered Deed of Mortgage, the Courts below have noted two sets of documents which prima facie lend credence to the claim of the plaintiffs. One, the complaint letter addressed by the defendants to the Revenue Authorities taking objection to the mutation of the name of the predecessor in title of the plaintiff to the suit property 1B, post the Sale Deed. Two, the receipts evidencing supply of sugarcane purportedly out of the suit property 1C to the sugar factories.

15. The veracity of the second set of documents may be debatable as it could be urged that a direct co-relation between sugarcane supplied under those receipts and the suit property 1C could not be established. However, the first set of documents i.e. letters addressed by the defendants to the Revenue Authorities prima facie clinch the issue of possession in favour of the plaintiffs. In those letters, the defendants have made a grievance that the suit lands were under the cultivation of the plaintiffs as mortgagees and disguised as a Deed of Mortgage, the defendants were made to execute a Sale Deed in respect of the suit property 1B and therefore the names of the purchasers shall not be mutated to the record of

rights of the suit land 1B. It was asserted that the plaintiffs were cultivating the suit lands as mortgagees since 25 years.

16. The endeavour of Mr. Patil to salvage the position by canvassing a submission that letters were in respect to suit property 1B only, does not merit countenance. There is a clear reference to the mortgage which dates back 25 years and, thereby, prima facie lends support to the claim of the plaintiffs.

17. In the face of the aforesaid material, the Courts below cannot be said to have committed any error in restraining the defendants from causing obstruction to the plaintiffs possession and enjoyment of the suit lands. No interference is thus warranted in the impugned order. The petition, therefore, deserves to be dismissed.

Hence, the following order.

ORDER

- 1] The petition stands dismissed.
- 2] Rule discharged.
- 3] No costs.

(N. J. JAMADAR, J.)