

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10812 OF 2011

Smt. Mathura Nathu Patil since deceased through Legal
Heir Shri Dashrath Nathu patil and others ... Petitioners
Vs.
Shri Vijay Balkrishna Dandekar and others ... Respondents

Mr. Krishna N. Kore for Petitioners.
Mr. N. V. Gangal for Respondent Nos.1 to 4.
Mr. S. D. Rayrikar, AGP for Respondent No.5.

CORAM : R. G. KETKAR, J.
DATE : 28TH FEBRUARY, 2013

P.C.:

Heard Mr. Kore, learned Counsel for petitioners, Mr. Gangal, learned Counsel for respondent Nos.1 to 4 and Mr. Rayrikar, learned AGP for respondent No.5 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the judgment and order dated 07.12.2009 passed by the learned Civil Judge Senior Division, Palghar below exhibit-93 in Special Civil Suit No.19 of 1997 as also the judgment and order dated 10.08.2011 passed by the learned District Judge-1, Palghar in Miscellaneous Civil Appeal No.14 of 2010. By order dated 07.12.2009, the learned trial Judge allowed the application made by respondent Nos.1 to 4 herein under Order 22, Rule 10 read with Order 1, Rule 10 of the Code of Civil Procedure, 1908 (for short 'CPC') for adding them as party defendants in the Suit instituted by the petitioners herein. By order dated 10.08.2011, the learned District Judge confirmed that order. The parties shall, hereinafter, be referred as per their status in the trial Court.

3. The petitioners instituted Special Civil Suit No.19 of 1997 before the Civil Judge Senior Division, Palghar for declaration that they are the owners and in possession of the land bearing Gat No.97B (Old S.No.61/1 pt.) of Village Sagave, Taluka Palghar (for short 'suit land') and for perpetual injunction restraining the original defendant No.1 by an order of injunction from obtaining any permission to sell and / or to transfer / assign in any manner the suit land or any part thereof or create any third party interests either himself or through his agents, servants, power of attorney holders or family members, etc.

4. Pending the Suit, the petitioners took out application for injunction. By order dated 19.08.1997, the learned trial Judge rejected the application at exhibit-5. Aggrieved by that order, the petitioners instituted Miscellaneous Civil Appeal No.51 of 1997 which was allowed on 03.05.2001 restraining the original defendant No.1 from creating third party interests. During the pendency of the Suit, respondent Nos.1 to 4 herein took out application on 09.10.2009 at exhibit-93 under Order 22, Rule 10 read with Order 1, Rule 10 of the C.P.C. for impleading them as party defendants *inter alia* on the ground that the defendant No.4 in the Suit i.e. the Sub-Divisional Officer, Dahanu Division, Dahanu gave permission on 02.05.2000. The said permission was challenged by the petitioners before the Maharashtra Revenue Tribunal. It is the case of the respondent Nos.1 to 4 that in pursuance of that permission, original defendant No.1 executed registered sale deed of suit land on 04.05.2000 and handed over possession to respondent Nos.1 to 4.

5. The plaintiffs resisted the application by filing their reply dated 04.11.2009 at exhibit-99. By order dated 07.12.2009, the learned trial Judge allowed the application. While allowing the application, the learned trial Judge observed that after the death of the original defendant No.1, his heirs and legal representatives i.e. original defendant Nos. 1/1 to 1/9 were brought

on record. They did not contest the suit and hence No W.S. order was passed against them on 30.08.2007. They filed application at exhibit-89 for setting aside No W.S. order and allowing them to file written statement. The said application was allowed. On 04.12.2009, Advocate for original defendant Nos.1/1 to 1/9 filed no instruction Purshis at exhibit-102. In view thereof, the learned trial Judge recorded that the heirs and legal representatives of the original defendant No.1 are not interested in contesting the claim of the plaintiffs, and it is in that context, he considered the application made by the respondent Nos.1 to 4 under Order 22 Rule 10 of the C.P.C. and allowed the same. Aggrieved by this decision, the plaintiffs instituted Miscellaneous Civil Appeal No.14 of 2010 before the learned District Judge, Palghar. By order dated 10.08.2011, the learned District Judge dismissed the Appeal. It is against these orders, the plaintiffs have instituted the present Petition under Article 227 of the Constitution of India.

6. In support of this Petition, Mr. Kore strenuously contended that the sale deed is executed in favour of the respondent Nos.1 to 4 on 04.05.2000. However, the present application was filed by them on 09.10.2009, and therefore, it is barred by limitation. He further submitted that the Courts below have not exercised the discretion judiciously but have exercised the discretion arbitrarily. He further submitted that whereas on one hand by order dated 03.05.2001, the learned District Judge allowed the Appeal preferred by the plaintiffs and restrained the original defendant No.1 from creating third party interests, on the other hand, by the impugned orders, the Courts below allowed the application made by the respondent Nos.1 to 4. In support of his submissions, he invited my attention to the provisions of Order 1, Rule 10 and Order 22, Rule 10 of the C.P.C. and also relied upon the decision of the Apex Court in the case of *Alkapuri Coop. Housing Society Ltd. Vs. Jayantibhai Naginbhai*, (2009) 3 SCC 467 and in particular Head-note 'A' thereof. Mr. Kore also invited my attention to the endorsement made by the registering

authority on 01.02.2010 keeping the registration of the sale deed in abeyance.

7. On the other hand, Mr. Gangal supported the impugned order. He submitted that the Courts below had concurrently recorded a finding of fact that there is collusion between the plaintiffs and defendant Nos.1/1 to 1/9 being the heirs and legal representatives of the original defendant No.1. No W.S. Order was passed against them. It is in these circumstances, the application was made for impleading them as parties. The Courts below, after considering the material on record, have allowed the application, and therefore, no case is made out for invocation of powers under Article 227 of the Constitution of India. In support of his submissions, he relied upon the decision of the Apex Court in the case of *Amit Kumar Shaw Vs. Farida Khatoon*, **2005(5) ALL MR (S.C.) 458**. Mr. Gangal has tendered original copies of the sale deeds for my perusal which shows that the sale deed was eventually registered on 01.08.2011 after the decision of the Maharashtra Revenue Tribunal, dated 04.01.2010.

8. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that the plaintiffs have instituted Suit for declaration of their ownership in respect of the suit land and for perpetual injunction restraining original defendant No.1 from obtaining any permission to sell and / or transfer / assign in any manner the suit land or any part thereof or create any third party interests either himself and / or through his agents, servants, power of attorney holders or family members. It is also not in dispute that pending that Suit, the plaintiffs took out application at exhibit-5. It is a matter of record that the application made by them was rejected by the trial Court on 19.08.1997 and the appeal preferred by them was allowed by the Additional District Judge, Palghar on 03.05.2001. It is further matter of record that the Sub-Divisional Officer, Palghar Division, Palghar gave the permission under

Sections 43 and 63 of Bombay Tenancy and Agricultural Lands Act, 1948 (for short 'Act') on 02.05.2000. The said permission was challenged before the Sub-Divisional Officer, and thereafter before the Maharashtra Land Revenue Tribunal and ultimately before this Court. By order dated 04.08.2010, this Court (Coram: Ranjeet More, J.) dismissed Writ Petition No.3500 of 2010. In other words, this Court did not set aside the permission dated 02.05.2000 granted by the Sub-Divisional Officer, Palghar. In pursuance of that permission, sale deed was executed by the original defendant No.1 in favour of the respondent Nos.1 to 4 on 04.05.2000. As noted earlier, the injunction application filed by the petitioners was dismissed by the trial Court on 19.08.1997 and for the first time, injunction was issued against the original defendant No.1 by the learned District Judge on 03.05.2001. Prior to issuing injunction, the original defendant No.1 had already sold the suit land to the respondent Nos.1 to 4 herein on 04.05.2000.

9. The Courts below have concurrently recorded a finding of fact that initially no W.S. Order was passed against the original defendant No.1 on 30.08.2007. Application at exhibit-89 was filed for setting aside No W.S. Order. The said application was allowed and despite that, on 04.12.2009, the Advocate representing original defendant Nos.1/1 to 1/9 filed no instructions purshis at exhibit-102. It is in that background, the learned trial Judge held that the heirs and legal representatives of the original defendant No.1 are not interested in contesting the claim of the petitioners. Accordingly, he allowed the application on 07.12.2009.

10. Aggrieved by this decision, the petitioners preferred Appeal. The learned District Judge considered the judgment of the Apex Court in the case of *Orissa Vs. M/s. Ashok Transport Agency*, **SCC 1 (2005) 536** as also *Dhanalakshmi Vs. P. Mohan*, **AIR 2007 SC 1062** and held that in the present case, the respondent Nos.1 to 4 have purchased the suit land and are claiming

in possession thereof. The heirs and legal representatives of the original defendant No.1 are not taking interests in the suit. It is in this context, the learned District Judge dismissed the Appeal preferred by the petitioners. The Courts below have recorded that *prima facie* there is collusion between the plaintiffs and defendant Nos.1/1 to 1/9.

11. In view of the above discussion, I do not find that the Courts below exercised discretion either arbitrarily or capriciously. After considering the material on record, I am satisfied that the Courts below have properly exercised discretion while allowing the application. In view thereof, I do not find any substance in the submissions made by Mr. Kore. Hence, the Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Minal Parab