

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6202 OF 2018

M/s.Sanidhya Enterprises and ors. .. Petitioners
Vs.
Shri Ashok Dattatraya Mengal and ors. .. Respondents

Mr.Manoj M.Badgujar, for Petitioners.
Mr.Dhanraj Balkrushna Gaikwad– Proprietor of Petitioners is present.
None for the Respondents.

CORAM : M.S.KARNIK, J.

DATE : 30th SEPTEMBER 2019

P.C. :

. Heard learned Counsel for the petitioners. None has appeared on behalf of original plaintiffs though they are duly served in terms of notice issued by this Court.

2. The petitioners are original defendants No. 1 to 4. The respondents -plaintiffs filed the Suit for declaration and injunction. It is the case of the plaintiffs that they are the owners of the suit property and they were deriving income from the suit premises prior to 1957. It is further contended that

though defendants No. 1 to 4 have no concern with the suit property, however, based on the mutation entry made in the year 1955-56, the defendants are trying to claim that they are in possession and carrying out constructions over the suit property. It is the case that since 1955, the defendants No. 2 to 4 through their predecessor are in possession of the suit property. Defendants No.2 to 4 executed development agreement in favour of defendant No.1 on 17/04/2013. On the strength of the said development agreement, defendant No.1 started construction over the suit property. After the construction proceeded substantially, the plaintiffs filed the present Suit in the year 2016.

3. The revenue proceedings initiated by the plaintiffs against the mutation entry made in favour of the defendants No.2 to 4 culminated in favour of defendants No.2 to 4 and against the plaintiffs.

4. Both the Courts below were of the opinion that if

injunction restraining defendant No.1 from disposing of the suit property is not granted, it may prejudicially affect the interest of the plaintiffs if plaintiffs succeed in the ultimate analysis.

5. It is the petitioners case that the defendants No.2 to 4 are claiming on the basis of the mutation entry made in the year 1955 and the respondents - plaintiffs challenge to the said mutation entry not having succeeded, it is the defendants No. 2 to 4 who appear to be in possession since 1955. The Courts below have held that defendants No. 2 to 4 are in possession. It is however the plaintiffs case that mutation entry in favour of the predecessor of defendants No.2 to 4 was wrongly made in the year 1955 though plaintiffs are the real owners.

6. According to the plaintiff there is no document in favour of defendants No. 2 to 4 to show as to on what basis they claim to have derived title in the suit property. The construction was started in the year 2014 on the strength of development agreement entered into on 17/04/2013 and the

Suit is filed only in the year 2016 after construction proceeded substantially. Considering these facts and that the plaintiffs have not appeared to contest this Petition despite service of notice, the order passed by the Appellate Court calls for interference. Hence, in my opinion, following order will subserve the interest of justice.

ORDER

- i) The impugned orders are set aside.
- ii) Application Exhibit 5 stands rejected subject however to defendants No. 1 to 4 filing an undertaking that further construction will be subject to the outcome of the Suit and no equities shall be claimed in case the plaintiffs succeed.
- iii) The prospective buyers will be informed about the pendency of the Suit.
- iv) It is stated that defendant No.1 is constructing 56

flats admeasuring 550 sq. ft each. The proprietor of defendant No.1 is personally present in the Court and undertakes to file undertaking to this Court that he shall keep 15 flats each admeasuring 550 sq.ft. vacant out of the building comprising 'A' wing and 'B' wing of the project. Undertaking to be filed within two weeks from the date of uploading of this order. Subject to compliance with the above terms, the impugned order is set aside.

7. Petition is allowed with no order as to costs.

List the matter for compliance on 07/10//2019.

(M.S.KARNIK, J.)

Urmila P. Ingle
Digitally signed
by Urmila P.
Ingle
Date:
2019.10.17
14:37:37 +0530