
(2015) 08 BOM CK 0231

In the Bombay High Court

Case No : Writ Petition No. 7944 of 2015

Abasaheb and Others

APPELLANT

Vs

Usha and Others

RESPONDENT

Date of Decision : 17-08-2015

Acts Referred:

Citation : (2015) 08 BOM CK 0231

Hon'ble Judges : S.P. Deshmukh, J

Bench : Single Bench

Advocate : Shaikh Mazhar A. Jahagirdar, for the Appellant; V.S. Bedre, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S.P. Deshmukh, J—Rule. Rule made returnable forthwith. Heard learned counsel for parties finally, by consent.

2. Petitioners are the plaintiffs in Regular Civil Suit No. 187 of 2013 pending before Civil Judge, Junior Division, Rahata, seeking declaration and injunction whereas, respondent No. 1 is defendant No. 4 in said suit who is purchaser of property from one Ramnath who happens to be brother of petitioners No. 1 and 2 and husband of defendant No. 3.

3. Plaintiffs had filed application at Exhibit-5 for injunction, whereas defendant No. 4 had filed application at Exhibit 27 seeking temporary injunction against the plaintiffs. The trial court, by common order dated 21-08-2013, rejected application Exhibit-5 and allowed that of defendant No. 4 at Exhibit 27, injunction the plaintiffs and others from interfering with the property purchased by defendant No. 4.

4. The appellate court as well under order dated 25-02-2015 dismissed miscellaneous civil appeal No. 49 of 2013 at the instance of the plaintiffs and had thus maintained dismissal of Exhibit-5 and grant of Exhibit 27 of the trial court. The petitioners-plaintiffs had been before this court in writ petition bearing No.

3463 of 2015. This court, by an order made on 31-3-2015, disposed of said writ petition, observing in paragraphs 5, 6 and 7 as follows;

"5. Both the courts have found that that after 1979, the property was recorded in the name of four brothers - sons of deceased Dagadu and names of Dagadu's wife and daughter came to be recorded in other rights column. Since 1979 there are other incidents, giving indication that the brothers had been separated and staying in severance and dealing with the properties accordingly.

6. Taking into account aforesaid, I do not deem it appropriate to accede to the request of the petitioners, although Mr. Hon, learned senior advocate has tried to persuade. Having regard to aforesaid glaring circumstances appearing at least prima facie, the writ petition does not deserve any indulgence on the request being made on behalf of the petitioners.

7. Looking at the scenario, it would be expedient and in the interest of justice that the lis pending between the parties be proceeded with expeditiously and Regular Civil Suit No. 187 of 2013 pending before Civil Judge, Junior Division, Rahata be disposed of as early as possible, preferably within a period of six months, since it is being intimated that issues have already been cast. Writ petition, as such, stands rejected with no order as to costs. It is further made clear that aforesaid observations shall not be deemed to be observations on merits."

5. Subsequently, defendant No. 4 appears to have moved application at Exhibit-71 in said suit, seeking police aid for enforcement of order passed on Exhibit-27 referred to hereinbefore since she was not able to cultivate the land and harvest the crop. The trial court had granted said application under order dated 07-07-2015 providing police aid to defendant No. 4 at the time of harvesting crop of sorghum and cultivation in lands bearing blocks No. 447, 449 and 451 situated within the precincts of village Pimpri-Nirmal, Taluka Rahata. Said order is the subject-matter of present writ petition.

6. Learned Counsel for petitioners vehemently submits that apprehension which had been expressed in application Exhibit-71 is of March-April, 2015 and since we are in August, 2015, the very purpose of said application is over and no purpose is likely to be served by maintaining order on Exhibit-71.

7. It is submitted on petitioners' behalf that this court under judgment in Smt. Nirabai J. Patil Vs. Narayan D. Patil, AIR 2004 Bom 225 : (2004) 1 ALLMR 657 : (2004) 3 BomCR 226 : (2004) 1 MhLj 1058 , has held that police aid is an extraordinary measure and an extreme step and therefore grant of police aid shall not be resorted to unless convinced about existence of extreme urgency, such as, violence by persons against whom the order has been passed.

8. Perusal of said judgment also shows and it would be pertinent to note here that, it has been referred to in paragraph No. 8 of the same that it is very difficult to give exhaustive list of circumstances in which the court can exercise

powers and further that the power has to be exercised with caution.

9. While deciding the matter in the case of Smt. Nirabai J. Patil (*supra*), the court in paragraph No. 6 had also taken into account observations in the case of Shrimati Ratnabai, Adv. and another Vs. Shri Satwarao Naik, AIR 1995 Bom 61 : (1994) 96 BOMLR 662 , which read thus;

"6. It is no doubt that the Police help is an extraordinary mode or procedure to implement the execution of the decree of orders. In other words, Police help is to be regarded as an extreme step, and as such it should not be recommended unless the Court is fully convinced of the existence of a grave emergency. Therefore, a decree-holder praying for police help has to state whether such help is required either;

(1) because of apprehension of violence or obstructions from judgment-debtor or at his instance or by others or; (ii) because of conditions of a general character such as the locality where execution will have to be effected being in a disturbed state or a class of people, similarly situated being likely to make a common cause with judgment-debtor and resist execution.

Thus, the special procedure for police help would not be allowed unless there are reasonable ground to suppose that the execution will not be effected without serious danger to public peace, because of apprehension of violence or obstruction from the judgment-debtor himself or because of the conditions of general character as such where the execution will have to make common cause that the judgment-debtor can resist the execution.

Besides this, in addition to the circumstances enumerated above to grant police help the Court must be fully convinced of the existing of grave emergency and to prevent commission of cognizable offence by the judgment-debtor or on his behalf by any person or a third party."

10. Learned counsel for the petitioners submits that petitioners are adjoining and adjacent land-holders and such police aid to respondent No. 1 is likely to be used to harass the petitioners.

11. On the other hand, learned counsel for respondent No. 1/defendant No. 4 Mr. Bedre contends that the conduct of the petitioners is such that they are bent upon not to let respondent No. 1 enjoy the property purchased by her for a valuable consideration and that such an intention of petitioners can be gathered from sorts of obstructions being created by them and by causing impediment in the way of respondent No. 1 / defendant No. 4 to cultivate the land and harvest the crops. He has particularly referred to threats posed to respondent No. 1 and submitted that there was all likelihood of eruption of violence at petitioners' behest and therefore such an application seeking police protection was impelled at the instance of respondent No. 1. Mr. Bedre contends that the petitioners still contend to be in possession and that contention has been taken into account by the trial court while passing the order impugned. He submits, the trial court has

observed that there is likelihood of untoward incident and it should not be waited for. The court had further observed that the plaintiffs failed to point out to be in possession and under the circumstances felt it necessary that defendant No. 4 deserves protection. He further submits that, apprehension of the petitioners that the order impugned would be misused is misplaced and uncalled for.

12. Having regard to the observations in paragraphs 11 and 12 of the impugned order and the observations in the cited case, I do not think any error has been committed by trial court in granting application Exhibit-71. There is no error of jurisdiction either.

13. Writ petition as such is dismissed. Rule stands discharged.

14. At this stage, learned counsel for the petitioners makes a request for continuation of order passed by this court on 06-08-2014, however, having regard to aforesaid, I am not inclined to give indulgence to such request. The request, as such, stands rejected.