
(2015) 10 BOM CK 0032

In the Bombay High Court

Case No : Appeal From Order No. 480 of 2013 and Civil Application No. 588 of 2013

Dattatraya Shripati Sathe

APPELLANT

Vs

Shankar Shripati Sathe and Others

RESPONDENT

Date of Decision : 06-10-2015

Acts Referred:

Citation : (2015) 10 BOM CK 0032

Hon'ble Judges : Mridula Bhatkar, J.

Bench : Single Bench

Advocate : Sanjiv Sawant, for the Appellant

Final Decision : Dismissed

Judgement

Mridula Bhatkar, J.—Admit. By consent, the Appeal disposed of finally at the stage of admission.

2. This Appeal from Order is directed against the judgment and order dated 12th February, 2013 passed by the learned second Joint Civil Judge, Senior Division, Pune below Exhibit "5" in Special Civil Suit No. 1234 of 2012 thereby rejecting the application below Exhibit "5" claiming relief of temporary injunction during pendency of the suit on the facts stated in the plaint.

3. It is the case of the Plaintiff that he and Respondents/Defendants Nos. 1 to 4 are the owners of ancestral property bearing survey No. 60(1) admeasuring 48 R, survey No. 65(1) admeasuring 30 R and survey No. 60(3) admeasuring 49 R at the village Pimpale-Saudagar, Tal. Haveli, Dist. Pune. The Plaintiff and Respondents No. 1 to 4 are the legal heirs of one Mr. Durga Khandu Sathe who died intestate on 19th June, 1937 leaving behind two daughters namely Champabai and Kamalabai and his widow Smt. Jaibai. It is the case of the Plaintiff that Jaibai has misrepresented that she is the sole heir of the entire suit property. One Shripati Bolhu Sathe was the nephew of Late Durga Khandu Sathe and so he had right in the suit property and the Defendant Nos. 1 to 13 claimed

their property rights as the successors of Late Durga Khandu Sathe and Shripati Bolhu Sathe. The Respondent Nos. 14(A) to 14(H) who were the children of one Namdeo, a son of one Champabai got their names mutated in some portion of the property. Champabai and Kamlabai were the two daughters of Smt. Jaibai Durga Sathe. Subsequently their children Namdeo and Damodar died intestate and their respective legal heirs i.e. Respondent Nos. 14(A) to 14(H) and 15(A) to 15(K) respectively, mutated their names. These are disputed claims and rights on the suit property. The Appellant i.e. Plaintiff came to know that the Respondent Nos. 15(A) to 15(K) without authority illegally executed Power of Attorney and Development Agreement of Respondent Nos. 23 and 24 on 26th October, 2004 in respect of some portion of the property. So also the Respondent No. 15(E) to 15(G) executed Power of Attorney and Development Agreement with Respondent No. 23 and 24 on 10th August, 2004. Similarly, Respondent Nos. 15(E) to 15(K) executed another agreement on 7th July, 2005 in respect of some portion of the property with Respondent Nos. 26 to 30. Similarly, Respondent Nos. 14(A) to 14(H) also disposed of the some portion of the property by entering into the Development Agreement with Respondent No. 22 in 9th August, 2004 and another Development Agreement and Power of Attorney dated 7th July, 2005 in respect of the other portion of the property with Respondent Nos. 26 to 30. Thus, there are many Agreements and execution of the Power of Attorney in favour of and by the Respondent Nos. 2 to 30 in respect of the suit property.

4. It is the case of the Plaintiff that he has the undivided share in the suit property. It is contended that therefore the Respondent Nos. 43 to 56 entered into different sale deeds with different heirs in the suit property. Thus all the transactions are illegal as the Plaintiff is having undivided share in the property and he was kept in dark. In the month of December, 2011 the Appellant i.e. the original Plaintiff requested the Respondents for partition of the property. However, the Respondent No. 1 tried to avoid it. Therefore, the Appellant obtained 7/12 extract and the revenue record of the suit property and came to know about these sale transactions between the Respondents. Therefore, he filed suit for declaration and perpetual injunction against the Respondents.

5. The learned counsel for the Appellant has submitted that the Appellant has claimed his right in the property and the earlier sale deed executed by late Shripati Bolhu Sathe is illegal. He submitted that the trial Court ought to have taken into account his undivided right in the suit property and so also the illegal transactions entered by the Respondents and his father Shripati Bolhu Sathe. He submitted that the property is jointly owned and there was no threat to his possession, therefore he neither raised any objection earlier nor filed the suit for the partition. He submitted that the Plaintiff has right in the suit property of Jaibai Durga Sathe as Durga Khandu Sathe died intestate and at the relevant time Shripati Bolhu Sathe was the sole surviving coparcener. He submitted that as soon as the Plaintiff came to know about the number of transactions in respect of suit property, he immediately filed the suit in December, 2011. It is his

contention that, if the property is disposed of by the Respondents, then the Plaintiff will lose his entire right in the property. Thus balance of conveyance lies in favour of him. He submitted that though as per the say of the Respondents, the buildings and shops are constructed on the suit land, it is necessary to give order of injunction against the Respondents directing them that they shall not deal with the flats or shops constructed on the suit land hereinafter and not granting of injunction will amount irreparable loss to the Plaintiff.

6. The learned senior counsel Mr. Kumbhkoni opposed this Appeal from Order and has submitted that the Defendants/Respondents are the bonafide purchasers of the suit property. They have not purchased the suit property survey No. 65 but purchased other land bearing survey No. 60(1) and 60(3) wherein the Plaintiff claims his right. He submitted that the property has traveled from many hands and the Plaintiff has no right in the suit property. He submitted that the father of the Plaintiff has sold the property long back. Under such circumstances, the Plaintiff can not claim his right in the property at this stage. He submitted that all the Defendants now amalgamated the plots and Survey numbers. He further submitted that one consolidated plan of construction of the buildings is approved by the Corporation and the buildings were constructed. He submitted that all the flats and shops in the buildings are sold and already third party rights are created. Under such circumstances, no interim injunction can be granted. He pointed out that earlier the trial Court did not grant any interim injunction.

7. Perused the plaint and the documents which are filed along with this Appeal. The Special Civil Suit No. 1234 of 2012 was filed by the Appellant against 67 Defendants in the year 2012 and the application (Exhibit "5") was rejected on 12th February, 2013. Thereafter, the Appeal from Order was filed in the Court and this Court on 5th May, 2015 granted ad-interim relief when the matter was taken on board. Thus, it appears that till 5th May, 2015 there was no interim injunction granted either by the trial Court or this Court. According to the Plaintiff the cause of action took place in December, 2011. In this application of temporary injunction under Order 39 of Code of Civil Procedure, the Plaintiff prayed that the Defendants be permanently restrained from creating third party interest by way of sale, mortgage, licence, development, partition or any other mode of the suit property. After going through the genealogy and the earlier transactions, it appears that the Plaintiff is the coparcener in the suit property. The title of the suit land is disputed by the Respondents. In the year 1974 Shripati Bolhu Sathe had entered into an agreement for sale of the suit land. In para 40, it is mentioned that the Plaintiff had published a public notice on 4th November, 1974 in respect of suit property informing that his father Shripati Bolhu Sathe is mentally unfit to understand and enter any transaction and not competent to contract in any transactions. However, the Plaintiff did not take immediate steps to protect his right in the property. According to him, he had knowledge of the transactions only in December, 2011 which had taken place between the Respondents. However, till then, the suit property along with the other lands was amalgamated for the purpose of development and the buildings

were constructed by some of the Defendants/deed holders. The flats and shops are constructed and also sold to other persons. There is definitely delay in filing of the suit wherein the prayer for injunction is made.

8. The Appellant's undivided share in the ancestral property will be decided after adjudicating all the issues by the trial Court. Hence, whatever development is carried out on the premises constructed and the amalgamated flats if sold, is subject to the outcome of the suit property. Any transactions by the Respondents in respect of the suit property shall not create equities in favour of the Respondents, if suit is decreed.

9. Thus, considering all the factors mentioned above, I hold that, the trial Court has taken a correct view that the Defendants prima facie are the bonafide purchasers and considering the nature of the suit and the nature of the claims agitated by the parties, it is not a case to grant temporary injunction. The trial Court has rightly rejected the same. I do not find any fault in the order passed by the trial Court and hence the Appeal from Order stands dismissed.

10. In view of the above, the Civil Application No. 588 of 2013 stands disposed of.

11. The learned counsel for the Appellant submits that the order passed by this Court to be stayed and the interim order dated 5th May, 2015 be continued for eight weeks as the Appellant wants to challenge this order before the Hon'ble Supreme Court. In view of the reasons given above and so also considering the interim injunction was never in operation pending Suit which was filed in the year 2012 and so also in the Appeal which was filed in the year 2013 but it was granted only on 5th May, 2015 as ad-interim stay. Hence, the prayer is hereby rejected.

12. The learned counsel for the Appellant/original Plaintiff requested to expedite the trial considering the age of the Appellant. The original Plaintiff is today 90 years old. Therefore, the trial Court is directed to record his evidence immediately preferably on or before 30th November, 2015. The parties to co-operate.