

(2024) 08 BOM CK 0023

In the Bombay High Court

Case No : Civil Revision Application No. 295 Of 2017

Sumati Ganpat Mahajan (Since Deceased) Thru. Lrs. Suhas
Ganpat Mahajan And Ors

APPELLANT

Vs

Prabhakar Laxman Dhage, Thru. Poa Suyog Prabhakar Dhage

RESPONDENT

Date of Decision : 27-08-2024

Acts Referred:

Code of Civil Procedure, 1908 — Order 7 Rule 11(d)
Transfer of the Property Act, 1882 — Section 53A
Specific Relief Act, 1963 — Section 41(h)

Citation : (2024) 08 BOM CK 0023

Hon'ble Judges : Milind N. Jadhav, J

Bench : Single Bench

Advocate : Sachindra B. Shetye, Dhanashri Mondkar, Akshay S. Pansare,
Vrushali Shivgan, Nipun Sawane, Suresh M. Kamble

Final Decision : Disposed Of

Judgement

Milind N. Jadhav, J

1. Heard Mr. Shetye, learned Advocate for Applicants and Mr. Kamble, learned Advocate for Respondent Nos. 1(a) to 1(d).

2. By consent of parties, present Civil Revision Application is taken up for final hearing. Revision Applicants are Defendants before Trial Court. Respondents - Plaintiffs filed Suit being Reg. Civil Suit No. 53/2014 against original Defendants. Org. Defendant Nos. 1 and 2 expired in the interregnum and their legal heirs are the Revision Applicants before me along with original Defendant No. 3. Original Plaintiff has also expired and legal heirs are the Plaintiffs in the Suit. Original Defendant No. 1 is the mother of Defendants. Defendants are aggrieved with the rejection of their application filed below Exh. 128 under O. VII R. 11(d) of the CPC. Defendants sought rejection of the Suit plaint in the facts and circumstances governing the dispute between the parties.

3. Learned Trial Court while passing the impugned order rejected the Application despite returning a finding that the contention of Defendants is a valid ground for rejection of injunction. Plaintiff has filed Suit seeking relief of perpetual injunction and nothing more. Suit plaint is annexed at Exh. A to CRA. Prayer clause (a) in paragraph No.16 of the Suit plaint seeks perpetual injunction against Defendants from disturbing possession of Plaintiffs or creating any disturbance with possession in respect of Suit property. Prayer (b) is a consequential declaratory relief sought by Plaintiffs seeking injunction against Defendants from dispossessing Plaintiffs from the Suit property. Reliefs prayed for in the Suit are on the premise that Plaintiffs are in possession of Suit lands. Suit lands are described in paragraph No. 2 of Suit plaint being agricultural lands bearing Survey Nos. 75/1 (part) and 75/3 (part) and 75/4, totally ad-measuring 1 H 44 R and 2 H 02 R situated at Village Yashwant Nagar, Taluka Vikramgad, Dist. Thane (now Dist. Palghar).

4. Mr. Shetye, learned Advocate appearing for Defendants would submit that the facts in the present case if seen and appreciated correctly by the Court would clearly reveal that Suit filed by original Plaintiff is simplicitor for injunction and it is not maintainable since original Plaintiff had no legal right of ownership and entitlement to the Suit lands. He would submit that a Suit for injunction is necessarily filed on the basis of legal and juridical title by the owner of Suit lands if he anticipates any threat to his possession. He would submit that in the instant case, the original Plaintiff or his legal heirs are not in possession of Suit lands but on the ground of claiming to be in possession of Suit been filed. He would submit that if original Plaintiff was in possession of Suit lands then his possession has to be qualified by an appropriate document of title in his favour like a sale deed or conveyance but in the present case the Plaintiffs are not in a position to produce any document of title enabling them to claim title to the Suit lands.

4.1. In the above background, Mr. Shetye has argued that the lis between parties dates back to the Defendants' mother executing an agreement for sale of the Suit lands with the original Plaintiff. He would submit that the said agreement admittedly for sale did not fructify and has remained as it is. He would submit that admittedly no sale deed was ever executed or registered between the parties. He would argue that admittedly, mother of Defendants was the owner of the Suit lands and after her demise, names of Defendants have been mutated as holders of the Suit lands in the revenue record.

4.2. He would candidly inform the Court that by agreement for sale dated 13.07.1992 mother of Defendants namely Sumati Ganpat Mahajan agreed to sell the Suit lands to original Plaintiff for a total consideration of Rs. 1,76,000/-. He would submit that out of this total consideration, part consideration was paid by original Plaintiff and received by mother of Defendants. He would also candidly inform the Court that the said agreement states that possession of Suit lands is handed over to original Plaintiff but according to Defendants, it is not so. He would submit that this fact is incorrect and can be proved by the fact that from

1992 onwards the suit lands were shown in the name of mother of Defendants and after her demise, in the names of Defendants as holders and not even once the original Plaintiff or his successors took steps for mutating their names as holders of the suit lands. He would submit that Suit lands are as on date in possession of the Defendants and they have their house structure on the Suit lands and they have also demarcated the Suit lands and put up a wire fencing around them since the year 2003 onwards. He would submit that the agreement for sale dated 13.07.1992 clearly states that sale dated deed would be entered into between parties subsequently but the same never fructified and therefore the agreement between parties remained as an agreement for sale thus implying that the suit lands were never conveyed to original Plaintiff. He would argue that an agreement to sale can never confer any peremptory right of entitlement and title to the original Plaintiff so as to enable him to file the Suit for injunction in respect of the Suit lands. He would submit that the agreement for sale was never registered also but would acknowledge and confirm that an amount of Rs. 92,551/- was paid by the original Plaintiff to the mother of Defendants which was received by her. While admitting the above fact, he would submit that original Plaintiff did not take any steps thereafter to pay the balance amount to the mother of Defendants or file any Suit for specific performance.

4.3. He would submit that original Plaintiff addressed Advocate's notice after a lapse of 11 years in the year 2003 to Defendants. Defendants replied to the said notice taking the stand that the original Plaintiff did not take steps for 11 to 12 years to fructify and specifically perform the agreement for sale dated 13.07.1992.

4.4. After the above notice was issued by original Plaintiff, he applied to the Tahsildar for mutation of his name in the revenue extract of the suit lands in the year 2005. Application of the Plaintiff was resisted by Defendants. Claim for mutation of Plaintiff's name was allowed by Tahsildar and upheld by the SDO. However in Revision proceedings filed by Defendants before the Addl. Commissioner Konkan Division, orders of Tahsildar and SDO was set aside.

4.5. He would next submit that after losing the aforesaid time and realizing fully well that a Suit for specific performance would be barred by limitation, original Plaintiff filed the present Suit being RCS No. 53/2014 seeking permanent injunction on the basis of claiming to be in possession of Suit lands on the strength of the agreement for sale dated 13.07.1992. He applied for interim relief in the Suit, which was rejected.

4.6. Mr. Shetye would therefore vehemently submit that such a Suit for injunction is clearly not maintainable on the basis of the agreement to sale. He would submit that remedy of the original Plaintiff was to file a Suit for specific performance of the agreement to sale dated 13.07.1992 he has not derived any title to the Suit lands under the Agreement. He would submit that Plaintiff, instead of filing a Suit for specific performance has mischievously filed Suit for injunction claiming to be in possession of Suit lands. He would submit that such a

Suit is not maintainable in the facts of the present case and is clearly barred by the provisions of S. 41(h) of the Specific Relief Act, 1963. He would submit that Plaintiff is clearly aware of the fact that if he files a Suit for specific performance of agreement to sale dated 13.07.1992, the same would be clearly barred and hence he has mischievously filed the present Suit for injunction without having any title to Suit lands. He would submit that there is one more reason to disqualify the Plaintiff's claim of he claiming to be in possession of suit lands. According to Defendants, Suit lands came to the ownership of their mother under the provisions of the then Bombay Tenancy and Agricultural Lands Act, 1948 [now Maharashtra Tenancy and Agricultural Lands Act, 1948] (for short "the said Act") as she was a protected tenant of the Suit lands. Hence he would submit that for conducting any sale of such lands received by a protected tenant, permission of the Competent Authority under Section 43 of the said Act is required. He would submit that without obtaining such permission from the Competent Authority possession cannot be never be transferred or given as it would amount to an illegality. Hence he would submit that on both counts case of the original Plaintiff fails miserably.

4.7. He would submit that in this background, Plaintiff approached the Trial Court for rejection of suit plaint under O. VII, R. 11(d) of the CPC. He would submit that Plaintiff's Suit is not maintainable even otherwise under the law of limitation. Hence, he would submit that rejection of Application by the impugned order on the ground that original Plaintiff had come into possession of the Suit lands under the agreement for sale without a sale deed being registered and executed is clearly not maintainable. Hence he prays for setting aside the impugned order and rejection of the Suit plaint.

5. PER CONTRA, Mr. Kamble learned Advocate for Plaintiffs would at the outset submit that the agreement to sale dated 13.07.1992 is a registered agreement between parties i.e. original Plaintiff and mother of Defendants. He has drawn my attention to the registered agreement dated 13.07.1992 and would contend that the Agreement apart from being registered was also acted upon by issuing a public notice in the local newspapers regarding the sale of Suit lands. Next, he would submit that as per the terms and conditions stated in the agreement, the seller was to obtain the requisite sale permission from the Competent Authority i.e. Mamlatdar, Dahanu. He would submit that as stated in the said agreement, possession of the Suit lands was handed over to Plaintiff on the date of agreement to sale against receipt of part consideration of Rs. 96,255/- and it was agreed between parties that the balance consideration would be paid at the time of execution of sale deed.

5.1. On the aspect of possession, Mr. Kamble has drawn my attention to the agreement to sale which is appended at Exh. A to the affidavit-in-reply of Defendants and persuaded me to read the same. He would submit that registration fee has been paid as also the stamp duty has been paid on the amount of Rs. 1,76,000/- by original Plaintiff as stated therein. He has

specifically drawn my attention to internal page No. 6 thereof and would contend that it was agreed between the parties that mother of Defendants was not in a position to cultivate the Suit lands and therefore agreed to sell the Suit lands at the rate of Rs. 22,000/- per Acre and agreed to receive the amount of Rs. 1,76,000/- for the entire Suit lands as per the then prevailing market rate on the basis of the oral agreement between the parties dated 14.04.1988.

5.2. He would submit that on 14.04.1988, mother of Defendants had received an amount of Rs. 12,551/- in cash which she has admitted in the said agreement.

5.3. Thereafter Mr. Kamble would draw my attention to one more clause therein which states that on 25.04.1988, a further amount of Rs. 50,000/- was received by the mother of Defendants by demand draft which is also stated and acknowledged by her in the agreement. Thus receipt of amount of Rs. 62,551/- is specifically acknowledged by the mother of Defendants in the said agreement. Next, he would submit that on the date of execution of agreement i.e. on 13.07.1992, a further amount of Rs. 30,000/- has been received by mother of Defendants by cheque No. 236585 drawn on Bharatiya State Bank, Vasai which has also been acknowledged. Thereafter the mother of Defendants has agreed that the balance amount will be paid to her by original Plaintiff on execution of sale deed.

5.4. He would then draw my attention to various terms and conditions of the agreement to sale and would submit that Defendants' mother had entered into the agreement with a conscious mind. He would submit that she had also undertaken to obtain permission from the Competent Authority considering that the Suit lands were received by her under the said Act and also agreed to pay any damages that may be incurred by original Plaintiff, if there was any delay or otherwise.

5.5. He would draw my attention specially to clause (6) on internal page No.10 of the agreement to sale wherein it is stated that possession of the Suit lands has been handed over to original Plaintiff in the presence of witnesses on the date of execution of the agreement and the Plaintiff has received the said possession. It is also stated in clause No. (6) that in the event if any person disturbs possession of the original Plaintiff then Defendants' mother and her successors-in-title would ensure that they will remove such obstruction if so required. This is the very clause which Mr. Kamble has stressed to drive home the point that even though if the original Plaintiff may not have prayed for the relief of specific performance of the said agreement, it cannot preclude the Plaintiff from maintaining the cause of action stated in the Suit proceedings and seek injunction on the basis of his possession.

5.6. He would submit that a suit for injunction in the facts of this case is clearly maintainable even in the absence of a registered sale deed because the agreement to sale is a registered document between parties and by virtue of this clause, possession of the Suit lands has been handed over to Plaintiff by mother

of Defendants. He would therefore submit that the bar of Section 41(h) of the Specific Relief Act, 1948 will not apply to the Plaintiff's case in the above facts and circumstances.

5.7. He would also draw my attention to further clauses in the agreement whereby mother of Defendants has stated that the Suit lands are without any encumbrance as also there will not be any encumbrance by her successors-in-title on the suit lands. He would submit that in the notice addressed by Advocate to Defendants, it was categorically stated that Plaintiff has showed his readiness and willingness to pay the balance consideration of Rs. 89,449/- in respect of the Suit land which was in Plaintiff's possession. He would submit that contrary to the claim of Defendants, it is the original Plaintiff who has barricaded the Suit lands with wire fencing and has put up the iron gate and has appointed a caretaker and is also taking the rice crop from the suit lands. He would submit that RTS proceeding adopted by original Plaintiff with respect to mutation are in fact pending in this Court. Writ Petition No. 2089/2016 filed by Plaintiffs is pending in this Court.

5.8. He would submit that it is only because of the nuisance and disturbance caused by Defendants to Plaintiff's possession of the Suit lands that Plaintiff was compelled and constrained to file RCS No. 53/2014 seeking perpetual injunction. Hence he would submit that the reasoning adopted by the learned Trial Court in rejecting the Application under O. 7, R. 11(d) of the CPC is correct and does not call for any interference in view of the peculiar but admitted facts in the present case and Defendants cannot take a plea that a sale deed has not been executed between parties. He would submit that the only reason why the sale deed could not be executed was because of the demise of Defendants' mother and the Defendants cannot take advantage of that fact, especially when the agreement to sale itself is a registered document.

5.9. Hence he would submit that triable issues have been raised by the Plaintiff in the facts of the present case by producing on record a registered agreement for sale between the parties which clearly records that possession of Suit lands has been handed over to Plaintiff by the predecessor-in-title of Defendants and hence the impugned order does not call for any interference and deserves to be sustained.

6. I have heard both the learned Advocates and perused the pleadings and record of the case with their able assistance. Submissions made by the learned Advocates have received due consideration of the Court.

7. At the outset, it is seen that the agreement for sale dated 13.07.1992 is a registered document. The said agreement for sale is so nomenclatured because it is fructifying an oral agreement dated 14.05.1988 between the parties. Thus it is seen that on 14.05.1988, Defendants' mother by an oral agreement agreed to sell the suit lands to original Plaintiff. It is also seen that on 14.04.1988 and 25.04.1988, Defendants' mother received an amount of Rs. 62,551/-from

Plaintiff, but only when she received the amount of Rs. 30,000/-on 13.07.1992 i.e. four years later, she entered into the agreement for sale with Plaintiff and registered the same. Once the agreement is registered, a prima facie case is made out by Plaintiffs that there is an agreement between the parties which is required to be considered. Clause No. (6) of the agreement for sale dated 13.07.1992 is extremely crucial and critical. In this clause, mother of Defendants has acknowledged and confirmed the fact that she has handed over possession of the suit lands to Plaintiff in presence of the witnesses and Plaintiff has received possession. Once this is the position on 13.07.1992 pursuant to the oral agreement between parties on 14.04.1988 and the said agreement for sale having been registered, a prima facie case is clearly made out for a triable issue by the Plaintiffs. The stance of Defendants that without praying for specific performance of the agreement for sale, such a plea of injunction is barred cannot be countenanced in such facts, especially when there is clear admission which is prima facie seen in the registered agreement for sale that possession has been handed over to Plaintiff.

8. In view of the above prima facie findings based on the documentary evidence, the impugned order will have to be sustained since clearly triable issues have been made out by the Plaintiff. Mr. Kamble learned Advocate has referred to and relied upon the decision of the Full Bench of this Court in the case of Sadashiv Chander Bhamgare Vs. Eknath Pandharinath Nangude AIR 2004 BOMBAY 378 to contend that a prospective transferee in possession can institute a Suit for protection of his possession if so threatened and in case of part performance under Section 53-A of the Transfer of the Property Act, 1882 if such a Suit is filed then such a Suit is maintainable in law. The decision of this case decided by the Full Bench of this Court clearly covers the present issue raised by the Defendants.

9. I have perused the said decision and it is seen that the provisions of Section 53-A of the Transfer of Property Act, 1882 in such facts create an equity in favour of the prospective purchaser in possession because a Suit for specific performance is always clearly barred by the law of limitation. The ratio of the said decision of the Full Bench prima facie clearly applies to the present case in the facts of the present case which have been noted by this Court while recording the submissions of Mr. Kamble.

10. Hence in view of the above, the impugned order is sustained as triable issues have been clearly made out and the Suit cannot be dismissed. Considering that the Suit has been filed in the year 2014, and has remained pending for the past one decade, the learned Trial Court is directed by this Court to dispose and decide the Suit being RCS No. 53/2014 as expeditiously as possible and in any event within a period of six months from today. Parties shall co-operate with the Trial Court and shall not seek unnecessary adjournments unless it is absolutely necessary in case of any urgency or exigency.

11. All contentions of both parties are expressly kept open.

12. With the above directions, Civil Revision Application stands disposed.