

Rajana -Vs.- Kaushalyabai & others

CNR No.MHBU010016612017

-ORDER BELOW EXH.05 -
(Passed on:-11th day of February 2020)

This is application has been filed by plaintiff in RCS No. 131/2008.

01. Learned advocate for the appellant vehemently submitted that the learned trial Court dismissed the suit and allowed the counter claim. He submitted that temporary injunction was granted in favour of the plaintiff. The trial Court overlooked 7/12 extracts which show that the suit property was in the name of plaintiff. Therefore, he submitted that effect and execution of decree in RCS no. 131/2008 be stayed till disposal of the appeal.

02. It is contention of the defendant that vendor of the appellant had no right to execute sale deed in favour of appellant. There is clinching the evidence to show that the appellant was never in possession of the suit property. Hence, the application be rejected.

03. It is worthwhile to mention that both the appellant and the respondent (plaintiff and defendants) had claimed ownership of the suit property. Learned trial Court rejected the plaintiff's claim and accepted the contention of the defendant. From judgment of trial Court, it is clear that original plaintiff had

deposed that she has purchased the suit property from previous owner Samadhan Gadekar. Samadhan (P.W.2) in his cross-examination had admitted that he had no knowledge of suit land having been exchanged. Samadhan (P.W.2) had also admitted that there was some mistake in respect of land alienated in favour of the plaintiff. It is further admitted by Samadhan (P.W.2) that he was not having possession of suit land and merely revenue entry was appearing in 7/12 extract of gut no. 418. Thus, it is clear that Samadhan (P.W.2) from whom appellant alleged to have purchased suit property was not in possession of suit property at any point of time and there were only mutation entries. In view of this, even if there are mutation entries in favour of the appellant, they would not prove possession of the appellant on suit property. After appreciation of the evidence, learned trial Court found that the respondent is in possession of suit property and not the appellant. The appellant is relying on mutation entry. In view of this, I do not find that decree and judgment is required to be stayed especially when that the suit was for declaration and perpetual injunction and was not for delivery of possession. Consequently, I pass following order:-

-ORDER-

Application (Exhibit No.5) is rejected.

(Rohan B.Rehpade)
Adhoc District Judge-1,
Buldana.

Date :-11-02-2020.