

IN THE COURT OF CIVIL JUDGE JUNIOR DIVISION,

BHOR DIST. PUNE

Reg. Civil Suit No. 106/2009

Reshma Pradeep Shete and Others Plaintiff

V/S.

Sonba Haribhau Navghane and Others Defendants

ORDER BELOW EXH. 82

(Dated:19/08/2019)

1. The Defendants No.3 and 4 has filed this application under O.39 R.4 r/w Section 151, Section 152 along-with Section 114 r/w O. 47 of the Civil Procedure Code (for short CPC) to set aside the order passed below Exh.62.

2. These defendants has submitted that, plaintiff has filed an application under Section 94(e) of the CPC on 08/03/2018 and defendants has filed their say below Exh.72 and prayed to reject the application. The application below Exh. 62 were filed under section 94(e) of CPC and the plaintiff has prayed to restrain the defendant No.01,03, and 04 from changing the nature of the suit land and alienating or creating the third party interest in the suit land. Therefore, defendants has shown reluctance and filed instant application, to set aside the order passed below Exh.62 as defendants consider themselves as aggrieved by the order passed below Exh.62.

3. The say of the plaintiff is called. The plaintiffs has filed their say below Exh.82. It is and submitted that, the order passed below Exh.62 is correct and as per the law. The application filed by the defendant below section 151, S.152, is not maintainable as per the law. Similarly, he further contended that, this court has no power to set aside its own order. Moreover, S.152 of CPC is not applicable in the present circumstances. The S.151 of CPC gives inherent powers to this court. Therefore, this application itself is devoid of any merits and it is prayed that, application be rejected.

4. Perused the application and contents of the same. Perused the say filed by the plaintiff. Perused the Record, Roznama, documents filed along with this application. Perused the order passed below Exh.62 and the documents filed along with Exh.73. On meticulous perusal of the contents of the application, it appears that, the defendant no.03 and 04 has filed the instant application, to set aside the order passed below Exh.62 as they are aggrieved by this order. The defendant has filed the instant application below provision of O.39 R.4 r/w S.151 and 152 to set aside the order as some documents were misplaced at the time of passing of the impugned order. There is error in the order and thereby, the defendants are aggrieved. It is also submitted that, on account of misplaced documents and the error aparant on the face of record, the order, passed below Exh.62 is necessary to be set aside by the court.

5. In view of these circumstances, i have given an anxious thought to the contents of the application and meticulously perused all the documents filed along-with instant application and order passed below Exh.62. The defendants has contended, in their application that, the Court has unreasonably passed order against the defendants. As defendant No.03 and 04 are nothing but bonafide purchasers of the suit land. The defendant has purchased the suit land through a valid sale-deed, from the defendant No.01. Similarly the documents filed along-with Exh.73 were misplaced at the time of passing of the order. Therefore, there is an error aparant on the face of record. Hence, In these circumstances, it is necessary to consider the provisions under Section 94 (e) of the CPC. The Section 94 (e) of CPC provides that, *"...in order to prevent the ends of justice from being defeated, the Court may, if it is so prescribed to make such other interlocutory orders as may appear to the Court be just and convenient"*. It means that, the order passed below Exh 62 is nothing but and interlocutory order passed by the court, on prima facie observation of the facts mentioned in the instant case. Therefore, it is needless to mention here that, in order to determine the application filed under Section 94 (e) CPC, the Court has passed the other interlocutory order. when it appears to court that, it is just and convenient to prevent the justice from being a defeated prima-faciely.

For this instance, it is needless to mention the ratio laid

down by Hon'ble Apex court : In **M/S Great Eastern Energy vs M/S Jain Irrigation Systems Ltd, 2010(3) ALL MR 872**, it has observed that:

The expression "prima facie case" does imply existence of an arguable case. It also means that there must be some material which on the face of it tends to show that triable issues are involved. At the stage of considering interim application, the Court is not required to render any finding on merits. The material placed on record is required to be examined at horizontal level. In-depth scrutiny so as to render final finding of fact is not called for'.

Therefore, the court has observed the documents and it found that, prima-facie arguable case is available with the plaintiff.

6. Moreover, it is also needless to mention here that, before vigorously knocking the doors of the Court by the parties, it is necessary to interpret the order and as per its *pith and substance*. It is necessary to consider the pith and substance of the order and to use Golden rule of interpretation, instead of mischief rule harmoniously. Moreover, it is again needless to mention here that, in the operative order below Exh.62, it is mentioned that, the application is '*partly allowed*' and defendants are restrained merely from alienating or creating third party interest. It means that, Court has passed very much balanced order and as per the

rule of *equity and conscience*. Also, while passing this order, it is very much considered that, defendant No. 03 and 04 are the bonafide purchasers of the suit land. It is also considered that, the contents of the documents filed along with Exh.73 and the contents of affidavit filed by defendant No.03 and 04 filed on record. In the reasoning, it is prima-faciely observed that plaintiffs has interest in the suit land. It does not mean that possession of the defendant has denied. The court is not for *De Minimis Non Curat Lex*. In terms of loss or damages caused to the either parties, it has been meticulously observed the interest of both of the parties to the suit. Also, the defendants are merely restrained from alienating or creating third party interest in suit land. The interest of defendant is also protected and thereby very much balanced order has been passed.

7. In the lines of para no.5 of page no.2, of the order. It is necessary to be read that '*..similarly plaintiffs further, contended that..*' as there is clerical mistake is committed at the hands of stenographer and in auto correction, letters 'Plaintiffs' turned into '*Defendants*'. The defendants has also drawn the attention towards the contents due to typographical mistake, so after the enquiry the stenographer has replied that order is uploaded on the same day on C.I.S. portal on 12/02/2019 itself.

8. The defendants, further, mentioned in their application in para no.1 that, the documents are not considered, which were filed along with Exh.73. On this instance, it is needless to mention that, all the documents filed in support of the application and say are meticulously considered before passing the order and relevant and crucial documents are mentioned in para no.12 of the order itself. The defendants has filed variety of documents along with list, but only *relevant documents which are necessary arrive at ends of justice are considered* in order to determine the question involved prima-faciely.

9. In view of this discussion, it is needless to mention that, on being dissatisfied over the order passed by the Court, defendants has submitted that, documents were misplaced at the time of passing of the order, Though he submitted so, but the relevant documents are appreciated in the impugned order.

10. In terms of loss and damages, being caused to the parties it has observed, the facts of mentioned in the plaint and thereafter, the application is *partly allowed*. The interests of either party is very much protected and in order to prevent the damages, the interest of defendant is also protected rationally. The defendants are merely restrained from alienating or creating the third party interest and thereby, the application below Exh.62 is party

allowed. In view of these circumstances and the provision laid down under S.151, S.114, O.47 of CPC, the application ceases its value in the eye of law. Hence, necessary order is passed as follows :

ORDER

- 1) The application (Exh.82) is rejected
- 2) No order as to cost.

Date: 19 /08/2019

(Awate P.P.)

Bhor

Jt.CJJD, Bhor, Dist. Pune.

“I affirm that the contents of this P.D.F. File order are same word for word as per original order.”

Name of the Stenographer : Shri. D.N.Sonar
Name of the Court : Shri. P. P. Awate,
(J.M.F.C., Bhore, Dist. Pune.)
Date : 19-08-2019
Order signed by Presiding Officer on : 19-08-2019
Order uploaded on : 19-08-2019