IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7535 OF 2023

Suvarna Ratnakar Taras ... Petitioner
Versus
Mangalprabhat Lodha and others ... Respondents

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Mr.Vikram N. Walwalkar with Mr. Amey C. Sawant with Mr. Virendrasingh Tupkir, for the Petitioner.
Mr. Amogh Singh with Mr.Aadarsh Vyas, Mr.Vicky Pohuja i/by Mr. Jeet Gandhi, for Respondent Nos.1 and 2.

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CORAM : SHARMILA U. DESHMUKH, J.
DATE : July 17, 2023.

P. C. :

1. The petition questions the order dated 23rd February, 2023 passed in Misc. Civil Appeal No. 9 of 2023 allowing the appeal partly and setting aside the order dated 5th December, 2022 passed below Exh.5 to the extent of Gut No.254 and as regards Gut No.269 to the extent of 6800 sqr. mtrs. which was in possession of the appellant who were the original defendant nos.18 and 19.

2. The Petitioner herein is the original plaintiff and the Respondent Nos.1 and 2 are the original defendant nos.18 and 19,

who had preferred the Misc. Civil Appeal No.9 of 2023, in which the impugned order has been passed. For the sake of convenience the parties are referred to their status before the trial Court.

3. Regular Civil Suit No.237 of 2019 was instituted by the plaintiff-Suvarna for partition and separate possession of her share in the four suit properties and for declaration that the sale deeds dated 24th December, 2007, 26th March, 2008, Agreement for Sale dated 17th August, 2010 and Agreement for sale dated 23rd February, 2012 and sale deed dated 22nd February, 2018 executed by some of the Defendants in favour of other Defendants are not binding upon her share, and, for cancellation of mutation entries. In the interim injunction application filed below Exh.5, the trial Court partly allowed the application and directed the Defendant Nos 1 to 19 to maintain status quo in respect of four properties i.e. agricultural land bearing Nos.57, 254, 269 and 247. Aggrieved by the order of the status quo, the defendant nos.18 and 19 preferred Misc.Civil Appeal No.9 of 2023 and by the impugned judgment and order dated 23rd February, 2023, the appeal came to be partly allowed and the order of status quo was set aside to the extent of Gut No.254 and as regards Gut No.269 to the extent of area of 6800 sqr.mtrs, giving rise to the present petition.

4 Heard Mr.Walwalkar, learned counsel for the Petitioner and Mr.Amogh Singh, learned counsel for Respondent Nos.1 and 2.

5. Learned counsel for the Petitioner submits that the impugned judgment indicates that the presiding Judge of the appellate Court had signed the impugned order on 23rd February, 2023. He would contend that vide Notification dated 16th March, 2023, the District Judge was transferred from the said post of District Judge-1, Vadgaon-Maval, District Pune as District Judge-9, Pune and Shri S.S.Pallod had taken charge as a District Judge-1. He would further submit that the posting had taken place with immediate effect and the web status as regards the impugned judgment shows that the judgment has been signed by the Presiding Officer on 27th March, 2023 and that the judgment was uploaded on 29th March, 2023. The second submission raised by the learned counsel for the Petitioner is that the Appellate Court gave too much importance to the subsequent developments carried out on two of the suit properties. He would further submit that the admitted position is that the properties are ancestral properties and as such, without consent of the plaintiff, the sale deed in question could not have been executed. In support of his submissions, he relies upon the decision ***In re Patan Alli Khan, [A.I.R. (34) 1947 Madras 248]***.

6. *Per contra*, learned counsel appearing for the Respondent Nos.1 and 2 submits that the date below the signature on the impugned judgment indicates that the same has been signed on 23rd February, 2023. He also placed his reliance on the roznama dated 23rd February, 2023, which records that the operative part of the judgment was pronounced and that the proceedings was closed. He would further submit that the roznama records that the advocates for both the parties were present and as such, operative part of the judgment was pronounced in presence of both the parties. As regards the merits of the matter he would contend that the suit has been filed after delay of almost 12 years from the date of the conveyance of the land by the owners in favour of the defendant Nos.18 and 19. He would further submit that the conveyances were executed on 24th December, 2007 and 26th March, 2008 and subsequently mutation entries were effected. He would further submit that the plaintiff in paragraph 13 of the plaint has admitted about acquiring knowledge of the registered sale deeds since 8th February, 2013, however, has instituted the suit in the year 2019 and as such, the suit is *prima facie*, barred by limitation. He would further submit that after the conveyance of the properties, the defendant nos.18 and 19 obtained various permissions and approvals and has developed integrated housing schemes on

portion of suit properties.

7. Learned counsel for the Respondent Nos.1 and 2 further submits that the development scheme being implemented on the larger land consists of total 34 towers, 77 country houses, and 27 villas and that the development on the land commenced in the year 2012 and as of date 2925 residential units in 28 buildings, 26 country houses and 28 villas have been completed. He would further submit that third party rights have already been created and the development of the larger land is at an advanced stage.

8. To counter the submissions that the District Judge could not have signed the judgment after his transfer, he relies upon the following decisions:

(a) *Surender Singh vs. State of Uttar Pradesh, [AIR 1954 SC 194];*

(b) *Vinod Kumar Singh Vs. Banaras Hindu University, [AIR 1998 SC 371];*

(c) *Mishrimal Vs. Municipal Council of Lonavala, [2006 (3) Mh.L.J];*

(d) *Omprakash Vs. Nagpur Municipal Corporation, [2010 (6) Mh.L.J.];*

(e) *Darayas Cawasji Balsara vs. Shenaz Darayas Balsara, [AIR 1992 Bom.175];*

(f) *Hakikulla vs. MHADA, [1997 (1) Mh.L.J.]*

(g) *Phool Kumari vs. Nandu Ram, [AIR 2003 HP 75*].

9. Considered the submissions and perused the papers with the assistance of learned counsel for the parties.

10. The suit properties are land bearing Gut Nos.57, 254, 269 and 347. In the present case this Court is concerned as regards the order of status quo passed in respect of Gut NO 254 and 269 as Defendant Nos 18 and 19 are the Appellants. The genealogy indicates that one Balkrishna Kondiba Bodke was the common ancestor, who had two sons and three daughters namely Rajaram (Plaintiff's father), Bhagwan, Baydabai, Meena and Subhadra respectively. Rajaram expired on 29th September, 2008 leaving behind his wife Sumitra (Defendant No.1), son Dattraya (Defendant No.2) and daughter Prachi (Defendant No.3) and the Plaintiff. The Defendant No.5 is the son of Bhagwan and Defendant Nos.6 to 8 are Baydabai, Meena and Subhadra. The case of the plaintiff is that there was no partition of the suit properties which are ancestral properties and after the death of Rajaram, the mutation entry was effected in the name of Sumitra, Dattraya and Prachi. It is claimed that on 15th May, 2003, she got married and thereafter was residing at her matrimonial house.

11. It is stated that Plaintiff's late father and Defendant Nos.

1, 2 and 4 to 8 in collusion with each other have sold lands bearing Gut No.254 in favour of Defendant Nos 18 and 19 vide registered sale deeds dated 24th December, 2007 and 26th March, 2008. It is further stated that after the death of Plaintiff's father two agreements for sale dated 17th August, 2010 and 23rd February, 2012. was executed in respect of land admeasuring 2 R and 10 R of Gut No.269. It is further stated that the defendant nos.18 and 19 have constructed group of residential buildings in Gut Nos.254 and 269.

12. In the order below below Exh.5, the trial Court has held that on consideration of the mutation entry in respect of the Gut No.254, the same indicates that in the sale deed of the year 2007 and 2008 executed in favour of the defendant nos.18 and 19, the description of Rajaram is as Joint Hindu Family Manager and that the Plaintiff and her sister Prachi are not parties to the sale deed. The trial Court observed that the plaintiff being the daughter is entitled to share in the ancestral properties and as such, directed status quo in respect of Gut No.57, Gut Nos.254, 269 and 247.

13. The Appellate Court took into consideration the public notices issued in the year 2007 and 2008 in respect of sale transaction of Gut No.254 to which the plaintiff had not raised any objection. It

was further observed that subsequent to the sale deed executed there are mutation entries effected and the 7/12 extracts and that NA permission was received in respect of Gut No.254 and and other lands on 24th October, 2011 and in respect of portion of 6800 sqr.mtrs. of Gut No.269 on 26th August, 2016. The Appellate Court further observed that sanctions and permissions granted for the construction in the year 2018-2021 and occupancy certificate has been issued to some of the buildings and villas which are constructed on the site including Gut Nos.254 and 269. Taking into consideration the above facts, the Appellate Court held that the appellants are bonafide purchasers for value without notice. The Appellate Court further observed that Gut No.269 is admeasuring 1.59 R and it is the Plaintiff's case that her father Rajaram's share was 51 R land and she claimed partition of the said area.

14. It is not disputed that vide registered sale deeds executed in the year 2007 and 2008 the Defendants have acquired land bearing Gut No.254 and as regards the Gut No.269, the portion admeasuring 6800 sqr.mtrs., out of Gut No.269 formed part of area admeasuring 10800 square meters which was sold by Balkrishna to third party who are the vendors of Defendant No 19. The specific case of the Plaintiff is that the share of the Plaintiff's father was 51 R in

Gut No.269 and as such there cannot be order of status quo in respect of the entire Gut No.269. Further the area of 6800 square meters formed part of the property sold by the grandfather of the Plaintiff during his lifetime. As far as Gut No.254 is concerned, the undisputed position is that after exercise of due diligence the properties were purchased in the year 2007 and 2008. The mutation entries were effected, there was amalgamation of the land with adjacent land and large scale development carried out. There was no objection raised since the year 2007 and 2008 and for the first time in the year 2019 the Plaintiff has raised objection despite being aware of the transactions in the year 2013 itself. The Defendant Nos 18 and 19 after exercise of due diligence have purchased the properties, developed the same and have created third party rights therein. Even if it is accepted that the suit properties are ancestral properties, considering that the claim has been raised aftr 11 years and after substantial developments have taken place, the balance of convenience tilts in favour of the Defendant Nos.18 and 19. It needs to be noted that the name of the Plaintiff was not mutated in revenue records and as such even the search taken prior to the sale transactions would not have yielded any results. As regards the share of the plaintiff in respect of the ancestral properties is concerned, the

properties which have been alienated can be adjusted against the share of other coparceners at the time of final adjudication.

15. In light of the above discussion, the order of status quo would cause irreparable loss and damage not only to the defendant nos.18 and 19 but also to the third party – flat purchasers who are not even party to the proceedings.

16. In so far as the submission as regards the judgment being signed after the Presiding officer had been transferred, the roznama of 23rd February, 2023 indicates that the judgment was pronounced in the open court in presence of the advocate for both the parties. As regards the signature , which is claimed to be subsequent signature, the signature on the judgment discloses that it is signed on 23rd February, 2023. In that context, it will be beneficial to refer to the decision of **Surendra Singh and Ors** (supra) and paragraph Nos.10, 11, 12 and 14 which reads thus:

> *"10. In our opinion, a judgment within the meaning of these sections is the final decision of the court intimated to the parties and to the world at large by formal "pronouncement" or "delivery" in open court. It is a judicial act which must be performed in a judicial way. Small irregularities in the manner of pronouncement or the mode of delivery do not matter but the substance of the thing must be there : that can*

neither be bluffed nor left to inference and conjecture nor can it be vague. All the rest the manner in which it is to be recorded, the way in which it is to be authenticated the signing and the sealing, all the rules designed to secure certainty about its content and matter@an be cured; but not the hard core, namely the formal intimation of the decision and its contents formally declared in a judicial way in open court. The exact way in which this is clone does not matter. In some courts the judgment is delivered orally or read out, in some only the operative portion is pronounced, in some the judgment is merely signed after giving notice to the parties and laying the draft on the table for a given number of days for inspection.

11. An important point therefore arises. It is evident that the decision which is so pronounced or intimated must be a declaration of the mind of the court as it is at the time of pronouncement. We lay no stress on the mode or manner of delivery, as that is not of the essence, except to say that it must be done in a judicial way in open court. But, however, it is done it must be an expression of the mind of the court at the time of delivery. We say this because that is the first judicial act touching the judgment which the court performs after the hearing. Everything else up till then is done out of court and is not intended to be the operative act which sets all the consequences which follow 335 on the judgment in motion. Judges may, and often do, discuss the matter among themselves and reach a tentative conclusion. That is not their judgment. They may write and exchange drafts. Those are not the judgments either, however heavily and often they may have been signed. The final operative act is that which is

formally declared in open court with the intention of making it the operative decision of the court. That is what constitutes the "judgment".

12. Now up to the moment the judgment is delivered Judges have the right to change their mind. There is a sort of locus paniteniea, and indeed last minute alterations sometimes do occur. Therefore, however, much a draft judgment may have been signed beforehand, it is nothing but a draft till formally delivered as the judgment of the court. Only then does it crystallise into a full fledged judgment and become operative. It follows that the Judge who "delivers" the judgment, or causes it to be delivered by a brother Judge, must be in existence as a member of the court at the moment of delivery so that he can, if necessary, stop delivery and say that he has changed his mind. There is no need for him to be physically present in court but he must be in existence as a member of the court and be in a position to stop delivery and effect an alteration should there be any last minute change of mind on his part. If he hands in a draft and signs it and indicates that he intends that to be the final expository of his views it can be assumed that those are still his views at the moment of delivery if he is alive and in a position to change his mind but takes no steps to arrest delivery. But one cannot assume that he would not have changed his mind if he is no longer in a position to do so. A Judge's responsibility is heavy and when a man's life and liberty hang upon his decision nothing can be left to chance or doubt or conjecture; also, a question of public. policy is involved. As we have indicated, it is frequently the practice to send a draft, sometimes a signed draft, to a brother Judge who also heard the case. This may

be merely for his information, or for consideration and criticism. The mere signing of the draft does not necessarily indicate a closed mind. We feel it would be against public policy to leave the door open for an investigation whether a draft sent by a Judge was indended to embody his final and unalterable opinion or was only intended to be a tentative draft sent with an unwritten understanding that he is free to change his mind should fresh light dawn upon him before the delivery of judgment.

14. As soon as the judgment is delivered, that becomes the operative pronouncement of the court. The law then provides for the manner in which it is to be authenticated and made certain. The rules regarding this differ but they do not form the essence of the matter and if there is irregularity in carrying them out it is curable. Thus, if a judgment happens not to be signed and is inadvertently acted on and executed, the proceedings consequent on it would be valid because the judgment, if it can be shown to have been validly delivered, would stand good despite defects in the mode of its subsequent authentication."

17. In the case of **Vinod Kumar Singh vs Banaras Hindu University and Ors** (supra) , the Apex Court observed in paragraph 8 as under:

"8. We have extensively extracted from what Bose J. spoke in this judgment to impresss upon everyone that pronouncement of a judgment in court whether immediately after the hearing

> *or after reserving the same to be delivered later should ordinarily be considered as the final act of the court with reference to the case. Bose J. emphasised the feature that as soon as the judgment is delivered that becomes the operative pronouncement of the court. That would mean that the judgment to be operative does not await signing thereof by the court. There may be exceptions to the rule, for instance, soon after the judgment is dictated in open court, a feature which had not been placed for consideration of the court is brought to its notice by counsel of any of the parties or the court discovers some new facts from the record. In such a case the court may give direction that the judgment which has just been delivered would not be effective and the case shall be further heard. There may also be cases-though their number would be few and far between-where when the judgment is placed for signature the court notices a feature which should have been taken into account. In such a situation the matter may be placed for further consideration upon notice to the parties. If the judgment delivered is intended not to be operative, good reasons should be given."*

18. Applying the aforesaid exposition to the facts of present case, the judgment was pronounced in open Court and the objection is that the same was signed later on after the charge was transferred. The Apex Court in the case of **Vinod Kumar Singh** (supra), has held that the judgment to be operative does not await signing thereof by the Court. It is not that after pronouncement the judgment was altered. The judicial act of pronouncement was performed and the

signing and sealing which are the rules designed to secure certainty about its contents and matter remained, which as held by the Apex Court in the case of **Surendra Singh and Ors** (supra), can be cured. Although I am not inclined to accept the submission of the learned counsel for Petitioner that the judgment was signed after transfer of charge in view of the roznama on record and date below the signature, the aforesaid decisions are relied upon to drive home the point that judicial act of pronouncement of judgment in open court was complete and hence no fault can be found in the manner of delivery.

19. In light of the discussion above, the Petition fails and stands dismissed.

(Sharmila U. Deshmukh, J.)