

**IN THE HIGH COURT OF MADHYA
PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 30th OF NOVEMBER, 2023

MISC. APPEAL No. 5257 of 2022

BETWEEN:-

**DRISHTI DEVCON PVT. LTD. THROUGH ITS
DIRECTOR SHRI SHAILESH MAHESHWARI S/O
LATE SHRI SHIVNARAYAN MAHESHWARI,
AGED ABOUT 48 YEARS, OCCUPATION:
BUSINESS 406 PUKHRAJ CORPORATE NEAR
HOTEL PRASHANT OPPOSITE NAVLAKHA BUS
STAND INDORE (MADHYA PRADESH)**

....PETITIONER

(BY SHRI SANJAY PATHAK – ADVOCATE)

AND

- 1. SHIVPRASAD S/O SHRI BALARAM, AGED
ABOUT 45 YEARS, OCCUPATION:
AGRICULTURE CULTIVATOR VILLAGE
HARSOLA TEHSIL DR. AMBEDKAR NAGAR
MHOW DISTRICT INDORE (MADHYA
PRADESH)**
- 2. SATISH S/O SHRI BALARAM, AGED ABOUT
40 YEARS, OCCUPATION: AGRICULTURE
CULTIVATOR VILLAGE HARSOLA TEH.
DR. AMBEDKAR NAGAR, MHOW (MADHYA
PRADESH)**
- 3. SMT. SHIVKANTA W/O SHRI GANESH
PATIDAR, AGED ABOUT 42 YEARS,
OCCUPATION: HOUSEWIFE VILLAGE
RANGWASA TEH. RAU (MADHYA**

PRADESH)

4. **SMT. PUSHPA W/O RAJESH PATIDAR, AGED ABOUT 42 YEARS, OCCUPATION: HOUSEWIFE VILLAGE KAILOD TEH. DR. AMBEDKAR NAGAR, MHOW (MADHYA PRADESH)**
5. **STATE OF M.P. THOUGH THROUGH COLLECTOR INDORE OFFICE NO. 101, ADMINISTRATIVE COMPLEX, MOTI TABELA, INDORE (MADHYA PRADESH)**
6. **VASUDEV S/O RAMGOPAL, AGED ABOUT 65 YEARS, OCCUPATION: AGRICULTURE/CULTIVATOR VILLAGE RANGWASA, TEH. RAU (MADHYA PRADESH)**
7. **MAMTA W/O ASHOK KUMAR PATIDAR, AGED ABOUT 55 YEARS, OCCUPATION: AGRICULTURE/ CULTIVATOR VILLAGE KHAJRANA TEH. INDORE (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI MANU MAHESHWARI, ADVOCATE FOR RESPONDENT NOS. 1 TO 4 AND SHRI CHETAN JAIN, ADVOCATE FOR RESPONDENT NOS.6 AND 7)

.....
This appeal coming on for admission this day, the court passed the following:

JUDGEMENT

Heard finally, with the consent of the parties.

2] This miscellaneous appeal has been filed by the appellant/defendant No.1 Company under Order XLIII Rule 1 of CPC against the order of injunction dated 12.10.2022, passed by the IV District Judge, Indore in Civil Original Suit No.989-A/2022,

whereby, in a suit for declaration, possession and partition, the temporary injunction application filed by the plaintiff has been allowed and it is directed that the defendant no.1 shall not create any third party right on the property.

3] In brief, the facts of the case are that the present appellant/defendant No.1 purchased the disputed land from the respondents/defendants Nos.6 and 7, for a consideration of Rs.4,65,24,000/- through a registered sale deed executed on 28.09.2013, and thereafter, the land was also mutated in the name of the appellant. Subsequently, diversion order was also obtained on 13.05.2014, and after obtaining the permission for development of a colony, the appellant has already developed a colony on the said land ad-measuring 6.482 hectares. The appellant has also surrendered 28028.47 sq.m. to the Government and the plots of the said colony have also been sold to as many as 442 plot owners.

4] In respect of the aforesaid land, a civil suit has been filed by the plaintiffs, the respondent Nos.1 to 4 herein, alleging that they happen to be the nephews of defendant Nos.6 and 7. It is averred in the plaint that the land originally belonged to one Ramgopal Patidar, who was survived by three children viz., Laxmibai, Vasudev and Mantabai and his wife Gitabai. The plaintiffs are the sons of Laxmibai and the suit was filed on the premise that the plaintiffs are residing in *Village Harsola Rangwasa*, Tehsil Mhow, District Indore whereas, the disputed land is situated at *Village Sindoda* and as the plaintiffs' mother Laxmibai died in the year 2011, the disputed land

was mutated initially in the names of Gitabai W/o Ramgopal and Vasudev S/o Ramgopal in the year 1997. However, after the death of Gitabai in the year 2013, the name of Mamtabai, who happens to be the daughter of Ramgopal was also mutated in the revenue record along with Vasudev. The plaintiffs' case was that they were not aware of all these proceedings, and it was only in the year 2022 when they went to their village when they found that a colony has been developed on the land of their ancestors, which led them to file this civil suit for declaration, permanent injunction and partition. In which the application for temporary injunction has been allowed.

5] Shri Sanjay Pathak, learned counsel for the appellant has submitted that the appellant had purchased the property from the respondent Nos.6 and 7 after due verification that no other co-owner of the disputed land is in existence, which is also reflected from the affidavit of respondent No.6/defendant No.2 Vasudev as also the mutation register (Annexure-R/2), in which the villagers have vouched that there is no other legal representative of the deceased Gitabai. It is also submitted that the petitioner Company is a *bona fide* purchaser of the said land, which is also apparent from all the permissions which they took after purchasing the land for a consideration of Rs.4,65,24,000/- in the year 2013. Counsel has submitted that the aforesaid land has been developed into a colony and its plots have been sold to as many as 442 persons, the details regarding which were also submitted before the Trial Court, however, the Trial Court has held that the appellant has not filed any

sale deed to support his submission that the land has already been sold to various purchasers.

6] It is also submitted by Shri Pathak that the appellant had submitted an application under Order X Rule 1 of CPC, in which he had furnished all the details of the sale deeds. A copy of the aforesaid application is also placed on record on 30.10.2023 before this Court, in which the names, addresses and the date of registry and its number are also mentioned in a tabular form and thus, it is submitted that the details of all such 442 persons were furnished in the Trial Court, however, on the ground that the sale deeds/registries of the plots by the various purchasers were not filed as only a list has been filed, and also that there was no partition between the plaintiff and the defendant Nos.6 and 7, the application for temporary injunction has been allowed and it is directed that there should be no alienation of the property till the final disposal of the suit. It is also submitted that the plaintiff resides in a nearby village only and there was no reason for them not to know that the land is sold by the respondent nos.6 and 7 to the appellant, and has already been developed by the appellant.

7] Shri Pathak has also submitted that as the appellant has already sold the plots to various purchasers, various police complaints have been made against the appellant despite his *bona fide* intention and even in the sale deed executed in its favour, the defendant Nos.6 and 7 have undertaken that in future if any dispute arises in respect of the disputed land, they would be responsible for

the same. Thus, it is submitted that the appeal be allowed and the impugned order be set aside.

8] On the other hand, Shri Manu Maheshwari, learned counsel for the plaintiffs/the respondent Nos.1 to 4 herein, has opposed the prayer and it is submitted that no case for interference is made out as the plaintiffs are the co-sharers of the property along with defendant Nos.6 and 7, being the children of Laxmibai and the defendant Nos.6 and 7 without any intimation to the plaintiffs, have not only mutated the property in their names, but have also sold the same without their consent, despite knowing the fact that they are the children of their sister.

9] Shri Maheshwari has also submitted that the plaintiffs had no reason to verify if their ancestral property has been sold by the respondent Nos.6 and 7, and the learned Judge of the Trial Court has rightly held that till the final disposal of the suit, the property should not be alienated in any manner. Otherwise, if plaintiffs succeed in their suit, it would be impossible for them to execute the decree and would only lead to multiplicity of the proceedings.

10] In support of his submissions Shri Maheshwari has relied upon the decisions rendered by the Supreme Court in the case of **Gajara Vishnu Gosavi Vs. Prakash Nanasaheb Kamble and Others** reported as (2009) 10 SCC 654; **Maharwal Khewaji Trust (Regd.) Faridkot Vs. Baldev Dass** reported as (2004) 8 SCC 488; and **Rajeshwari and another VS. Sudha** passed in M.P. No.2425 of 2023 dated 04.05.2023.

11] Counsel for the respondent Nos.6 and 7, on the other hand, has supported the cause of the appellant and it is submitted that the land was mutated in the names of respondent Nos.6 and 7 subsequent to the death of Laxmibai, which led the respondent Nos.6 and 7 to believe that they are the only legal representatives of their father Ramgopal Patidar. It is also submitted that according to the answering respondents, their father had already made such arrangements in favour of the mother of the plaintiffs so as to ensure that she should not have any grievance and should not claim any share in his property. Thus, the plaintiffs are not entitled to claim the partition of the disputed property.

12] In rebuttal, counsel for the appellant has submitted that since the land has already been diverted and has already been sold by the appellant, at the most, the relief which can be granted to the plaintiffs is in terms of the money, and the respondent Nos.6 and 7 have already agreed in the sale deed itself that they would be responsible for any dispute which takes place in the future in respect of the disputed property.

13] Heard counsel for the parties and perused the record.

14] From the record, it is apparent that so far as the appellant Company is concerned, it had purchased the property a decade ago, way back on 28.09.2013, from the respondent Nos.6 and 7, for a total consideration of Rs.4,65,24,000/- which is still a considerable amount even going by the today's standards. Thereafter, the appellant's name was also mutated in the revenue records in the

year 2013-2014 as also the *Rin Pustika* was prepared, which is placed on record, and subsequently, the appellant also obtained diversion permission, which was granted on 13.05.2014 for development of the colony. Thereafter, on 06.05.2015, registration of project was also obtained under the M.P. Panchayat Avam Gram Swaraj Adhiniyam, 1993 issued by the Collector, and after the development work was completed, the Completion Certificate in respect of development of colony has also been issued to the petitioner from the competent authority/Additional Collector on 17.02.2021 and the Company has also surrendered the land to the Municipal Corporation vide order dated 22.04.2022 for the purposes of garden, road, sewerage, water line etc. Thus, the appellant Company have obtained all the requisite permissions in accordance with law, after purchasing the property in the year 2013. It is also apparent that from 2013 till the filing of the suit, no dispute was ever raised by the plaintiffs in any manner regarding their title on the disputed property despite the fact that they reside in a nearby village only. It is also found that the appellant has already sold the plots in the colony developed as aforesaid and to demonstrate the same, the appellant has also placed on record the names of as many as 442 purchasers, their addresses, and the registry numbers with the date, and the names of such purchasers have also been mutated in the revenue record. The orders of mutation of all such persons have also been placed on record.

15] In such circumstances, when this Court considers the case of the appellant/defendant No.1, *vis-à-vis*, with the case of the plaintiffs, it is difficult to believe that the plaintiffs who were residing in a nearby village right from the beginning, had not had a clue about the huge piece of land sold by their maternal uncle and aunt to the appellant.

16] Although, if considered from the angle of the *prima facie* case, if the ancestral land is sold without partition, it is in favour of the plaintiffs. However, so far as the balance of convenience is considered, this Court is of the considered opinion that the appellant is the *bona fide* purchaser of the suit land and apparently, the plaintiffs have slept over their rights for a period of around nine years and in between, the appellant not only purchased the property which is a huge piece of land, but also developed a colony on it and have also sold the same to hundreds of purchasers, whose rights are also involved in the matter, and there is not a single document filed on behalf of the appellant which can be said to be a document obtained through any fraud or misrepresentation.

17] It is also found that in the sale deed executed by the respondent Nos.6 and 7 in favour of the appellant, it is also stipulated that there is no dispute pending in any Court and there is no other right of any other person in the said property, and in the mutation register also, the villagers have stated that there is no other legal representative of the deceased Ramgopal and his wife Gitabai and their legal representatives are the only Vasudev, the respondent

No.6 and Mamta, the respondent No.7. These documents are sufficient to hold that the appellant was under a *bona fide* impression that there is no other legal representative in existence to claim the disputed property, otherwise, there was no reason for them to part with such a huge amount in the year 2013. Thus, it is found that the balance of convenience is in favour of the appellant, who have already sold the property after developing the same after incurring huge costs. In such circumstances, the irreparable injury which would be caused to the appellant and the subsequent purchasers would be far more than the injury which would be cause to the plaintiffs as much water has flown after the land was sold in the year 2013.

18] In such circumstances, this Court is of the considered opinion that the learned Judge of the Trial Court has erred in passing the order that there should be no alienation of the property especially when, it has already been sold to as many as 442 persons, who must have also spent substantial amount to purchase the same and have also got their names mutated in the record. This Court is of the considered opinion that the loss which the plaintiffs have suffered or might have suffered can now be compensated in terms of money only by the defendants, and they cannot claim the property back which has already been sold in the year 2013 and resold to hundreds of persons. In such circumstances, this Court is of the considered opinion that any condition regarding alienation of the property would be onerous to the appellant as also the subsequent purchasers

and thus, the impugned order cannot be sustained in the eyes of law and the same is liable to set aside.

19] So far as the decision relied upon by Shri Maheshwari, counsel for the respondent Nos.1 to 4 in case of **Maharwal Khewaji Trust (Supra)** is concerned, the same is distinguishable as in the said case, injunction was sought against the respondents from alienating the suit property and putting up any construction thereon whereas, in the present case, not only that the property has been sold to the appellant, but it has also been resold by the appellant after developing the colony as aforesaid, and transferring the rights in the form of 442 plots to various purchasers.

20] So far as the case of **Gajara Vishnu Gosavi (Supra)** is concerned, in which the Supreme Court has held that if the partition has not taken place between the legal heirs and in the absence of partition of property by metes or bounds, either by a decree of a Court in a partition suit or by a settlement amongst the co-sharers, possession cannot be handed over to vendee, is also distinguishable as in the present case, not only the possession has been handed over to the appellant in the year 2013, but he has also given the possession to the other purchasers and merely because the partition has not taken place of the suit property, the rights which have accrued to the other purchasers during the last nine years cannot be curtailed, which would cause irreparable injury to them, who might have also spent their life earnings in purchasing the plots.

21] Similarly, in the case of **Rajeshwari (Supra)** it was the case involving a small plot, and the enormity of the interest involved of the hundreds of people in the present case cannot be lost sight of.

22] Resultantly, the impugned order is hereby set aside, and the appeal stands *allowed* and *disposed of*.

(SUBODH ABHYANKAR)
JUDGE

Bahar