

. * **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment pronounced on : February 21, 2014*

+ **CM(M) 941/2012 & C.M. No.16405/2013**

VIKRAMJEET BHAMBRI Petitioner
Through Mr. Shekhar Dasi, Adv.

versus

SANJEEV JINDAL Respondent
Through Mr. K. K. Sharma, Sr. Adv. with
Mr. Ashutosh Dubey & Mr. Abhishek
Chauhan, Adv.

AND

+ **CM(M) 942/2012 & C.M. No.16403/2013**

DHARAMBIR BHAMBRI Petitioner
Through Mr. Shekhar Dasi, Adv.

versus

SANJEEV JINDAL Respondent
Through Mr. K. K. Sharma, Sr. Adv. with
Mr. Ashutosh Dubey & Mr. Abhishek
Chauhan, Adv.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. I propose to decide both these petitions filed by the petitioners respectively under Article 227 of the Constitution of India by this common order. The petitioners have assailed the order(s) dated 21st July 2012 passed

by the learned Trial Court whereby the respective applications filed by the petitioners under Order 39 Rule 1 and 2 CPC were dismissed.

2. Brief facts for the purpose of adjudication of the present petitions are that the relation between the two petitioners is that of nephew and uncle, respectively. The property bearing No.236-250 situated at G.T. Road, Shahdara, Delhi-32 (hereinafter referred to as the “suit property”) was taken on rent by Sh. Kasturi Lal Bhambri, father of Vikram Jeet Bhambri (petitioner in CM(M) 941/2012), from Late Sh. Ram Chander, grandfather of the respondent on 24th January, 1952. Later on the tenancy of the suit property devolved among Kasturi Lal Bhambri, in respect of 2/3rd of the suit property and the rest of the 1/3rd portion came into the tenancy of Dharambir Bhambri (petitioner in CM(M) 942/2013).

3. The petitioners had filed two separate suits for possession under Section 6 of the Specific Relief Act (hereinafter referred to as “the Act”) against the respondent in respect of the suit property stating that while the petitioner(s) is a tenant in the suit property, the respondent is a trespasser therein. It was stated that the petitioner(s) was in actual physical possession of the suit property till evening hours of 14th December, 2008 and the respondent in the night removed the locks and trespassed the suit property and disposed the petitioner(s). It was further stated that a police complaint had been filed by the petitioner(s) against the respondent on the basis of which FIR bearing No.503/08 dated 18th December, 2008 had been registered with P.S. Mansarovar Park under Sections 447/448 IPC. The criminal case was stated to have been pending against the respondent.

4. During the pendency of the two suits, the petitioner(s) filed an application under Order 39 Rule 1 and 2 CPC for interim relief seeking to restrain the respondent from alienating, transferring, parting with possession,

creating third party interest and from making any sort of construction over the suit property in any manner till the final disposal of the suit. It was stated therein that the attorney of the petitioner(s) had seen 2-3 persons in front of the suit property and on enquiry, he came to know that they were the intending buyers of the suit property. The petitioner(s) averred that the respondent wanted to create third party interest in the suit property. In the reply to the said application, the respondent contested the application and stated that the petitioner(s) had filed another suit against the respondent wherein also an application under Order 39 Rule 1 and 2 CPC was filed. It was stated that this was the third application which was based on presumption and assumption and filed with a view to mislead the Court. It was averred that not even a single document had been filed by the petitioner(s) to prove their tenancy over the suit property at the time of filing of the suit for possession.

5. The learned Trial Court while dismissing the applications filed by the petitioners in the respective suits observed as under :

“The present suit was filed in the year 2009. The matter is already at the stage of PE and as many as ten witnesses have already been examined, cross examined and discharged. In the present application, the plaintiff has failed to disclose the name of 2-3 persons who were seen by the attorney of the plaintiff. in these circumstances, I am of the opinion that the plaintiff had failed to make out a prima facie case in his favour. The balance of convenience also does not lie in favour of the plaintiff and the plaintiff shall also not suffer an irreparable loss and injury in case the injunction as prayed for by the plaintiff is not granted.”

6. With this observation the learned Trial Court dismissed the applications filed by the petitioners in their respective suits and aggrieved thereof the petitioners filed the present petitions respectively under Article 227 of the Constitution of India.

7. It is well settled principle of law that the High Court while exercising its power under Article 227 of the Constitution of India, cannot proceed to act as a Court of appeal by interfering in mere errors of finding fact which requires re-appreciation and re-weighting of evidence unless it results in manifest miscarriage of justice as a Court of appeal. The said power under Article 227 of the Constitution of India has to be exercised sparingly and circumspectly to ensure that decision making done by lower Court and tribunal below is within their bounds and limits.

8. The said power under Article 227 of the Constitution of India being supervisory in nature cannot be equated with the powers of appellate Court and the jurisdiction under Article 227 could not be exercised as a cloak of an appeal in disguise.

9. Scope of interference in a petition under Article 227 of Constitution of India is discussed in the following judgments :

- (i) In ***Waryam Singh and Another v. Amarnath and Anr.***, AIR 1954 SC 45, the court observed; “This power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in-
“Dalmia Jain Airways Ltd. V. Sukumar Mukherjee”, AIR 1951 CAL 193 (SB) 1(B), to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors.”
- (ii) In ***Mohammed Yusuf Vs. Faij Mohammad and Ors.***, 2009 (1) SCALE 71, Supreme Court held; “The jurisdiction of the High Court under Article 226 & 227 of the Constitution is limited. It could have set aside the orders passed by the Learned trial court and Revisional Court only on limited ground, namely, illegality, irrationality and procedural impropriety”.

- (iii) In ***State of West Bengal and Ors. Vs. Samar Kumar Sarkar***, JT 2009 (11) SC 258 Supreme Court held; “10. Under Article 227, the High Court has been given power of superintendence both in judicial as well as administrative matters over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. It is in order to indicate the plentitude of the power conferred upon the High Court with respect to Courts and the Tribunals of every kind that the Constitution conferred the power of superintendence on the High Court. The power of superintendence conferred upon the High Court is not as extensive as the power conferred upon it by Article 226 of the Constitution. Thus, ordinarily it will be open to the High Court, in exercise of the power of superintendence only to consider whether there is error of jurisdiction in the decision of the Court or the Tribunal subject to its superintendence.”
- (iv) In ***Laxmikant Revchand Bhojwani and Anr. Vs. Pratapsing Mohansing Pardeshi Deceased through his Heirs and Legal representatives***, JT 1995(7) SC 400, Apex Court observed; “The High Court under Article 227 of the Constitution of India cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes.”
- (v) In ***Bathutmal Raichand Oswal Vs. Laxmibai R. Tarta***, AIR 1975 SC 1297 the Court again reaffirmed that the power of superintendence of the High Court under Article 227 being

extraordinary was to be exercised most sparingly and only in appropriate cases. The Supreme Court speaking through Bhagwati J. as his Lordship then was observed thus:

“If an error of fact, even though apparent on the face of the record, cannot be corrected by means of a writ of certiorari it should follow a fortiori that it is not subject to correction by the High Court in the exercise of its jurisdiction under Article 227. The power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior Court can do in exercise of its statutory power as a Court of appeal. The High Court cannot in guise of exercising its jurisdiction under Article 227 convert itself into a Court of appeal when the legislature has not conferred a right of appeal and made the decision of the subordinate Court or tribunal final on facts” (emphasis supplied)

The Supreme Court in the case of *Babhut Mal* (supra) approved the dictum of Morris L., J. in *Res v. Northumberland Compensation Appellate Tribunal*, 1952 All England Reports 122.

(vi) In the case of *State of Maharashtra vs. Milind & Ors.*, 2001 (1) SCC 4, the Supreme Court observed:

“The power of the High Court under Article 227 of the Constitution of India, while exercising the power of judicial review against an order of inferior tribunal being supervisory and not appellate, the High Court would be justified in interfering with the conclusion of the tribunal, only when it records a finding that the inferior tribunal's conclusion is based upon exclusion of some admissible evidence or consideration of some inadmissible evidence or the inferior tribunal has no jurisdiction at all or that the finding is such, which no reasonable man could arrive at, on the materials on record.” (Emphasis supplied)

(vii) Again in the case of *State vs. Navjot Sandhu*, (2003) 6 SCC 641, the Supreme Court observed:

“Thus the law is that Article 227 of the Constitution of India gives the High Court the power of superintendence over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any Act of the State Legislature. The supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of their authority and to seeing that they obey the law. The powers under Article 227 are wide and can be used, to meet the ends of justice. They can be used to interfere even with an interlocutory order.

However, the power under Article 227 is a discretionary power and it is difficult to attribute to an order of the High Court, such a source of power, when the High Court itself does not in terms purport to exercise any such discretionary power. It is settled law that this power of judicial superintendence, under Article 227, must be exercised sparingly and only to keep subordinate Courts and tribunals within the bounds of their authority and not to correct mere errors. Further, where the statute bans the exercise of revisional powers it would require very exceptional circumstances to warrant interference under Article 227 of the Constitution of India since the power of superintendence was not meant to circumvent statutory law. It is settled law that the jurisdiction under Article 227 could not be exercised as the cloak of an appeal in disguise.” (Emphasis supplied)

10. Upon careful reading of observations in the above referred cases, it can be safely said that the scope of judicial interference under Article 227 is well settled and the Court ceased of the proceedings under Article 227 cannot act as a Court of appeal and should interfere with the decision of the inferior tribunal or Court only to keep the authorities and Courts within their bounds and in the cases where it results into manifest miscarriage of justice and not in all other cases to correct mere errors. The power under Article

227 is thus discretionary in nature and can be exercised in the cases where the lower Court ignores material piece of evidence or considers some evidence which it ought not to have considered resulting into injustice and not in cases where there are two views possible and the view adopted by lower Court is reasonable and plausible one and the High Court would be unjustified to interfere in such cases merely to arrive at different view in the matter as this would be re-appreciating the evidence on finding of facts which is the role of the appellate Court and not the supervisory Court acting under Article 227 of the Constitution of India.

11. It is the admitted position that the two suits for possession were filed by the petitioners in the year 2009 and the matters were at the stage of PE when the applications under Order 39 Rule 1 and 2 CPC were filed. As many as ten witnesses have already been examined, cross examined and discharged. In the application under Order 39 Rule 1 and 2 CPC the petitioner(s) had failed to disclose the name of 2-3 persons who were seen by the attorney of the petitioner(s). The petitioner(s) had failed to make out a case for grant of interim injunction as prayed for. The learned Trial Court has rightly made its observations by the impugned order. There is no provision of appeal.

12. The grant of an interlocutory injunction is in exercise of discretionary power and hence, the appellate courts will usually not interfere with it. However, the appellate courts will substitute their discretion if they find that discretion has been exercised arbitrarily, capriciously, perversely, or where the court has ignored the settled principles of law regulating the grant or refusal of interlocutory injunctions. This principle has been stated by this Court time and time again. [See for example *Wander Ltd. vs. Antox India P. Ltd.*, 1990 (Supp) Supreme Court Cases 727, *Laxmikant V. Patel vs.*

Chetanbhai Shah, (2002) 3 SCC 65 and *Seema Arshad Zaheer vs. Municipal Corpn. of Greater Mumbai*, (2006) 5 SCC 282]. The appellate court may not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion.

13. In view of the abovementioned facts and circumstances of the case and the well settled law in this regard, I am not inclined to interfere with the impugned orders passed by the learned Trial Court dismissing the application under Order 39 Rule 1 and 2, also considering the powers of this Court under Article 227.

14. Both the petitions are dismissed.

(MANMOHAN SINGH)
JUDGE

FEBRUARY 21, 2014