

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5412 OF 2014

Saheblal Farid Sutar & Ors

..Petitioners.

Vs

Chhannavir Pandit Vhanmane
and Ors

.. Respondents

Mr. Surel S. Shah, Advocate for Petitioners.

CORAM : R.G.KETKAR,J.

DATE : 09/06/2015

PC:

1. Heard Mr. Surel Shah, learned counsel for the petitioners at length.
2. By this Petition under Article 227 of the Constitution of India, the original plaintiffs have challenged the Judgment and order dated 16.11.2013 passed by the learned Jt. Civil Judge, Jr.Dn., Solapur, below Exhibit-5 in Regular Civil Suit No.928 of 2013 as also the Judgment and order dated 18.1.2014 passed by the learned District Judge-II, Solapur in Civil Misc. Appeal No.169 of 2013. By these orders, the Courts below dismissed the application made by the petitioners for temporary injunction.
3. In support of this Petition, Mr.Shah strenuously contended that in the year 1934, partition was effected between the sons of Babasaheb, namely, Farid (predecessor-in-title) and Kamal.

Parties were put in possession of shares allotted to them in the partition. He further submitted that Babalal, son of Kamal, had instituted Regular Civil Suit No.835 of 1986 for possession. The suit was dismissed in default. Subsequently, he had instituted suit, namely, Regular Civil Suit No.886 of 1997 for declaration and injunction in respect of area admeasuring 1H. 37R. The suit was tried on merits and it was dismissed. The petitioners instituted Regular Civil Suit No.83 of 2011 against Manzi, one of the sons of Farid, and purchaser. During pendency of that suit, application at Exhibit-5 was taken out which was allowed. He heavily relied upon the order dated 24.11.2000 passed by the learned trial Judge in Regular Civil Suit No.886 of 1997 and submitted that in that suit the Court accepted that the partition was effected in the year 1934 between Farid and Kamal and Survey no.52/3 corresponds to Gat No.316. He submitted that the Courts below committed serious error in holding that the plaintiffs are not in possession. He, therefore, submitted that the petition requires consideration.

4. I have considered the submissions advanced by Mr. Shah. I have also perused the material on record. The short question is whether the plaintiffs have established their possession over the suit property in dispute. The Courts below have concurrently found that the petitioners-plaintiffs did not establish their

possession. In particular, the learned District Judge in paragraph 13 considered the revenue records right from 1989-90 onwards and found that the father of defendants no.2 to 6 - Babalal was in possession of Gat No.316/A (316/1). In view of Section 157 of the Maharashtra Land Revenue Code, 1966, the learned District Judge observed that the revenue entries are having presumptive value and though the presumption of correctness of revenue entries is rebuttal, the plaintiffs have failed to rebut the statutory presumption which is attached to the revenue entries. In the absence of rebuttal evidence, it cannot be held that the petitioners-plaintiffs are in possession of the entire area of land Gat no.316/1.

5. In the case of **Wander Limited and another Vs. Antox India Private Limited, 1990 (Supp.) SCC 727**, the Apex Court in paragraph 14 has observed as under:

1.“....., the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. The Appellate court will 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. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in *Printers (Mysore) Private Limited Vs. Pothan Joseph*, (1960) 3 SCR 713, (SCR 721)

2.“....These principles are well established, but as has been observed by Viscount Simon in *Charles Osenton & Co. V. Jhanton*, 1942 AC 130' ... the law as to the reversal by a court of appeal of an order made by a Judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case'.”

6. The said position was reiterated subsequently by the Apex Court in the case of **Ramdeo Food Products (P) Ltd. Vs. Arvindbhai Rambhai Patel and Ors.**, (2006) 8 SCC 726, and in particular paragraphs 125 to 127 thereof.

7. In the light of the tests laid down by the Apex Court in the aforesaid decisions as also having regard to the fact that the Courts below, after appreciating the material on record, have concurrently found that the plaintiffs are in possession, in my opinion, this is not a fit case for exercising powers under Article 227 of the Constitution of India. It cannot be said that the findings recorded by the Courts below are perverse being contrary to material on record or that the findings are based on no material. In view thereof, no case is made out for invocation

of powers under Article 227 of the Constitution of India. The Petition fails and the same is dismissed.

(R.G.KETKAR, J.)