

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11028 OF 2014

Shri Manohar Namdeo Shinde	..	Petitioner
vs.		
Shri Prajwal Pratap Nalage	..	Respondent

Mr. V. S. Talkute for Petitioner.
Mrs. Nayna Pratap Nalage – mother of Respondent present.

CORAM : M. S. SONAK, J.
DATE: 16 APRIL 2015

P.C. :-

1] This petition questions the following order :-

(A) Orders dated 5 January 2011 and 27 January 2011 in special civil suit no. 40 of 2014, declining interim relief in favour of the petitioner – plaintiff;

(B) Order dated 21 November 2014 made by the District Judge Satara, dismissing the petitioner's appeal against the aforesaid orders.

2] The petitioner has instituted a suit for specific performance of agreement dated 22 April 2013. It is the case of the petitioner that in pursuance of the agreement, the petitioner has not only paid an amount of Rs.3,32,550/- to the respondent, but further, the petitioner was also put in possession of the suit property. The

petitioner, after averring that he is ready and willing to perform his part of the contract, has instituted a suit for specific performance and therein he applied for interim reliefs to protect possession. The learned trial court as well as the appeal court, by the impugned orders have declined such interim relief to the petitioner.

3] Mr. Talkute, the learned counsel for the petitioner submitted that there are written documents on record which establish that possession of the suit property was handed over by the respondent to the petitioner. Further, in the reply opposing interim reliefs, the respondent may have commented upon the veracity of the agreement dated 22 April 2013 as well as documents in respect of possession, but significantly, the respondent has not denied the execution of lease deed dated 8 February 2013, which is also one of the documents on basis of which the petitioner claims possession to the suit property. Mr. Talkute pointed out that the petitioner has made improvements in the suit property, including by way of cultivation of sugarcane. In as much as, the impugned orders do not consider all such relevant aspects, they are required to be interfered with.

4] Having heard the learned counsel for the petitioner and the respondent, who appears in person, in my judgment, no case is

made out to interfere with the concurrent findings *prima facie* recorded by the two courts in the matter of refusal of interim relief to the petitioner.

5] The records would *prima facie* indicate that the suit property belongs to minor Sou. Nayan Pratap Nalage. There is nothing on record that any permissions were obtained by the respondent for the purpose of alienating suit property of the minor. The documents, upon which the petitioner places reliance are both unregistered and insufficiently stamped. The two courts have come to the *prima facie* finding that the documents appear to be suspicious and cannot be relied upon for the purposes of arming the petitioner with any interim reliefs. In so far as the lease deed is concerned, the same is alleged to have been executed on 8 February 2013 before a Notary on stamp paper of Rs.100/-. The agreement for sale, on basis of which the suit for specific performance has been instituted is dated 22 April 2013. The appeal court, has rightly expressed surprise as to the proximity between the two documents, by observing that there is no explanation whatsoever in the plaint as to what prompted the respondent to execute an agreement for sale within two months from the date of execution of the so-called lease deeds. Both the courts, have referred to circumstances, which renders it unsafe to rely upon the documents concerning the existence of the agreement as well as possession.

6] As has been held by the Hon'ble Apex Court in the case of *Wander Ltd. & Anr. vs. Antoz India P. Ltd.*¹, an appeal against the interlocutory order, is an appeal basically on principle. In such appeal, normally, there is no scope to interfere with *prima facie* findings of fact, unless, perversity is established. In the present case, both the trial court as well as the appeal court have recorded *prima facie* findings of fact against the petitioner. There is no perversity in the record of such findings.

7] The mother of the respondent, who appears in person states that there is no proposal to sale or transfer the suit property. Accordingly said statement is accepted and the same shall continue during the pendency of the suit.

8] Except for the aforesaid, there is no necessity to interfere with the impugned orders. Petition is dismissed. There shall be no order as to costs.

9] It is clarified that all observations made in the impugned orders as also the present order are only *prima facie* for the purposes of deciding the issue of interim relief. Accordingly, the Civil Court, at the stage of deciding the suit after record of evidence,

1 1990 (Supp) SCC 727

shall not be influenced by them. The Civil Court to expedite the hearing of the suit.

10] All parties to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)

Chandka