

Mr. Ashok B. Tajane for Petitioners.
Mr. Vijay Patil i/b. Mr. Ditendra K. Mishra for Respondent No.1.
Ms Monali M. Patil for Respondents No.2 to 5, 6A, 6B and 7 to 13.

P.C. :

Heard Mr. Tajane, learned Counsel for petitioners, Mr. Patil, learned Counsel for respondent No.1 and Mr. Patil, learned Counsel for respondents No.2 to 13 at length.

2. By this Petition under Article 227 of the Constitution of India, original defendants No.13 and 14 have challenged the judgment and order dated 27.11.2013 passed by the learned District Judge-16, Pune in Civil Appeal No.542 of 2013. By that order, the learned District Judge has dismissed the applications at exhibits-5 and 26 taken out by the defendants No.13 and 14 in Civil Appeal No.542 of 2013. That Appeal is preferred by defendants No.13 and 14 challenging the judgment and decree dated 12.08.2013 passed by the learned Civil Judge, Junior Division, Khed-Rajgurunagar, Pune in Regular Civil Suit No.124 of 2001. The parties shall hereinafter be referred to as per their status in the trial Court.

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instituted Special Civil Suit No.1213 of 1998 on 09.07.1998. The Suit was renumbered as Regular Civil Suit No.124 of 2001. He submitted that during the pendency of the Suit, plaintiff took out application exhibit-5 for injunction restraining defendants No.1 and 2 as also 13 and 14 from disturbing plaintiff's possession over the suit property as also from creating third party interest in the suit property till the decision of the Suit. By judgment and order dated 05.03.2003, the learned trial Judge dismissed the application. The said order was not challenged by the plaintiff. The Suit was ultimately decreed on 12.08.2013, and for the first time, the learned trial Judge issued injunction restraining defendants No.1 to 14 from causing obstruction and interference to the possession of the plaintiff over the suit property. In short, Mr. Tajane submitted that right from 1998 till 2013, no injunction was operating against the defendants No.13 and 14. Defendants No.13 and 14 are in possession of the suit property. He submitted that aggrieved by that decision, defendants No.13 and 14 preferred Civil Appeal on 04.09.2013. Pending the Appeal, defendants No.13 and 14 filed application exhibit-5 for issuing temporary injunction and exhibit-26 for staying the execution of the decree dated 12.08.2013 passed in Regular Civil Suit No.124 of 2001.

4. Mr. Tajane submitted that the plaintiff herein instituted Writ Petition No.7199 of 2013. By order dated 05.09.2013, this Court issued notice to the respondents, returnable on 04.10.2013, and till next date, granted ad-interim relief in terms of prayer clause (b), which is as under:

“b] During the pendency of this Writ Petition, this Hon'ble Court be pleased to direct Respondent No.2 herein to maintain status quo in respect of the suit property.”

5. Subsequently, that Petition was disposed of on 07.10.2014 on the ground that the order impugned in the Petition was revisable before the State Government. The Petition was dismissed on the ground that

plaintiff has equally efficacious alternate remedy.

6. Mr. Tajane submitted that plaintiff has instituted Writ Petition No.3845 of 2014 in this Court challenging - i) judgment and order dated 30.10.2003 passed by the Superintendent of Land Records, Pune in Appeal No.237 of 1997, ii) judgment and order dated 28.12.2014 passed by the Deputy Director of Land Records, Pune and iii) judgment and order dated 04.01.2014 passed by the Minister for Revenue, Government of Maharashtra. He submitted that the plaintiff had moved the Superintendent of Land Records, Pune after almost 30 years. The order passed by the Superintendent of Land Records, Pune as also order passed by the Minister for Revenue, Government of Maharashtra are in favour of defendants No.13 and 14. The Petition was heard on 07.10.2014 and after hearing both the sides, Rule was issued and during the pendency and till final disposal of the Petition, this Court directed the parties to maintain status-quo regarding the suit property.

7. Mr. Tajane submitted that the learned District Judge dismissed the application mainly on the ground that on 05.09.2013, this Court in Writ Petition No.7199 of 2013 granted ad-interim relief in terms of prayer clause (b) whereby the parties were directed to maintain status-quo qua the suit property. He submitted that the said Petition was disposed of on 07.10.2014 on the ground that the plaintiff has equally efficacious alternate remedy. The learned District Judge was, therefore, not justified in relying upon the ad-interim order passed in that Petition. He submitted that the very fact that between 1998 and 2013, no injunction was operating against the defendants No.13 and 14, is indicative of the fact that they are in possession. If the stay to the trial Court's decree is not granted, the Appeal will be rendered infructuous. He, therefore, submitted that this is a fit case for staying the decree passed by the trial

Court.

8. On the other hand, Mr. Patil submitted that though during the pendency of the Suit, injunction was not operating against the defendants No.13 and 14, the Suit was decreed on 12.08.2013. Defendants No.13 and 14 preferred Appeal on 04.09.2013. By the impugned order dated 27.11.2013, the learned District Judge dismissed exhibit-26. The Petition is instituted on 20.01.2014. During the pendency of the Petition, no interim order is passed. In other words, he submitted that from 12.08.2013 till date, the decree passed by the trial Court is not stayed. He, therefore, submitted that no case is made out for staying the decree when the injunction is operating from 12.08.2013.

9. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, plaintiff instituted Suit on 09.07.1998. During the pendency of the Suit, application Exhibit-5 was taken out. The application was dismissed on 05.03.2003. It is admitted position that plaintiff did not challenge that order and thus, the injunction was not operating against defendants No.13 and 14 during pendency of the Suit. After considering the evidence on record, the learned trial Judge decreed the Suit. Perusal of the judgment shows that the learned trial Judge framed issues at exhibit-70. Issue No.4 reads thus:

“Whether plaintiff proves his lawful possession over suit property, as alleged?”

10. The learned trial Judge has discussed this issue from paragraphs 39 to 41. After considering the evidence on record, the learned trial Judge answered issue No.4 in the affirmative by holding that plaintiff is in possession over the suit property Survey No.175/1B admeasuring 1 Acre and 175/2B admeasuring 3 Acres 12 Gunthas and that defendants

have no concern with the suit property.

11. It also appears from record that plaintiff instituted Writ Petition No.7199 of 2013 in this Court inter alia challenging the order dated 22.12.2012 passed by the Additional Commissioner, Pune Division, Pune in RTS Revision Application No.358 of 2002 and praying for confirmation of order dated 24.11.1998 passed by the Circle Officer, Devachi Alandi. On 05.09.2013, this Court issued notice to the respondents. In paragraph 1, this Court observed that it perused the judgment in Regular Civil Suit No.124 of 2001 passed by the Civil Judge, Junior Division, Khed-Rajgurunagar, Pune and it was thereafter observed that the finding recorded by the Minister that the plaintiff's Suit was also dismissed, is prima facie, incorrect. In other words, the Court has perused the judgment passed by the trial Court in R.C.S.No.124 of 2001 and thereafter directed the parties to maintain status-quo in terms of prayer clause (b), extracted hereinabove. It is no doubt true that eventually that Petition was disposed of on 07.10.2014 on the ground that the order impugned in the Petition was revisable before the State Government.

12. In the meantime, on the same day, this Court admitted Writ Petition No.3845 of 2014 by issuing Rule and directing the parties to maintain status-quo regarding the suit property. Perusal of the order dated 07.10.2014 also shows that this Court considered the decree passed by the trial Court on 22.08.2013 and observed that the issue raised in the Petition deserves consideration. After hearing both sides, this Court admitted the Petition by issuing Rule and directed the parties to maintain status-quo regarding the suit property.

13. It is also material to record that aggrieved by the trial Court's

decree, defendants No.13 and 14 preferred Civil Appeal No.542 of 2013 on 04.09.2013. Pending that Appeal, defendants No.13 and 14 took out application exhibit-5 for injunction. In view of Section 106 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), in my opinion, defendants No.13 and 14 have an equally efficacious alternate statutory remedy of filing Appeal from Order under Order 43, Rule 1(r) of C.P.C. Section 106 of C.P.C. lays down that where an appeal from any order is allowed, it shall lie to the Court to which an appeal would lie from the decree in the Suit in which such order was made. In other words, against the order passed by the learned District Judge refusing injunction in application exhibit-5, defendants No.13 and 14 have an equally efficacious alternate remedy of filing Appeal from Order under Order 43, Rule 1(r) of C.P.C. I, therefore refrain from examining the validity of the order below exhibit-5 reserving liberty to the defendants No.13 and 14 to file appropriate proceedings as indicated hereinabove.

14. As far as order below exhibit-26 is concerned, the Suit was decreed on 12.08.2013 and the learned trial Judge issued injunction restraining the defendants No.1 to 14 from causing obstruction and interference to the possession of the plaintiff over the suit property. As noted earlier, the learned trial Judge has found the plaintiff in possession of the suit property. Though the Appeal was filed in 04.09.2013 and application exhibit-26 was taken out on 24.10.2013 and was decided on 27.11.2013, from 27.11.2013 till date, no stay is operating in favour of defendants No.13 and 14. As noted earlier, by order dated 07.10.2014 passed in Writ Petition No.3845 of 2014, this Court has directed the parties to maintain status-quo regarding the suit property. The question is what is meant by status-quo. In the case of *Kishore Kumar Khaitan Vs. Praveen Kumar Singh*, (2006) 3 SCC 312, the Supreme Court has observed in paragraph 5 thus,

“5. An interim mandatory injunction is not a remedy that is easily granted. It is an order that is passed only in circumstances which are clear and the prima facie materials clearly justify a finding that the status quo has been altered by one of the parties to the litigation and the interests of justice demanded that the status quo ante be restored by way of an interim mandatory injunction. Keeping this principle in mind, it is necessary to see whether in the case on hand, the Additional District Judge was justified in passing the interim order of injunction.”

15. Thus, by applying the test laid down by the Apex Court, in my opinion, the order of status-quo will have to be clarified. From 12.08.2013 onwards, the injunction is operating against defendants No.13 and 14 on the premise that the plaintiff is in possession of the suit lands. In view therefore, the injunction order, which is in force from 12.08.2013 till date, cannot be stayed. Granting stay at this stage will virtually amount to partly dismissing the Suit instituted by the plaintiff as far as the prayer of perpetual injunction is concerned. Hence, no case is made out for interfering with the order passed below exhibit-26. Reserving liberty to the defendants No.13 and 14 to file Appeal from Order challenging the order below exhibit-5, this Petition fails and the same is dismissed. No case is made out for invocation of powers under Article 227 of the Constitution of India. It is needless to clarify that while deciding the Appeal, the learned District Judge will consider the evidence on record and decide the same in accordance with law uninfluenced by the observations made herein. It is made clear that I have not examined the petitioners' challenge to the order passed below exhibit-5.

(R. G. KETKAR, J.)