

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10185 OF 2014

Manjula Pundalik Dalvi ... Petitioner
Vs.
Sulochana Janardan Jadhav and others ... Respondents

Mr. A. Y. Sakhare, Senior Advocate i/b. Ms Nikita Trivedi for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : 10TH JUNE, 2015

P.C. :

Heard Mr. Sakhare, learned Senior Counsel for petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, the original defendant No.5 has challenged the judgment and order dated 14.08.2014 passed by the learned Ad-hoc District Judge-2, Raigad-Alibaug in Civil Miscellaneous Appeal No.33 of 2012. By that order, the learned District Judge set aside order dated 29.02.2012 passed by the learned trial Judge below exhibit-5 and issued injunction restraining the original defendants from creating in any manner third party rights and interest in the suit land till disposal of the Suit.

3. In support of this Petition, Mr. Sakhare submitted that respondents No.1 and 2 instituted Suit for declaration of their ownership as also for perpetual injunction restraining the defendants from creating third party interest. He submitted that respondents No.1 and 2 claimed that Kondu @ Kondya Anaji Mundhe had purchased the suit lands under Section 32-G of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short 'Act'). The said Kondu had one daughter namely Dhondibai

Kondu Mundhe and after marriage - Laxmibai Vitthal Junghare. Respondents No.1 and 2 are daughters of the said Laxmibai. On that premise, respondents No.1 and 2 claimed ownership over the suit lands. He submitted that Kondu did not have any issue and he died leaving behind his brother Gotiram. Gotiram had two sons and the original defendants are grand children of Gotiram. He submitted that during the pendency of the Suit, respondents No.1 and 2 took out application at exhibit-5 for injunction restraining defendants from creating third party interest. The learned trial Judge rejected the application by observing that prima facie respondents No.1 and 2 did not establish their relationship with Kondu. Except producing photographs of the marriage ceremony of plaintiffs' son, no evidence was produced by them to establish their relationship. Aggrieved by that decision, respondents No.1 and 2 preferred appeal. During the pendency of the Appeal, respondents No.1 and 2 produced documents such as letters of Police Patil of Village Barvai and Vasambe dated 04.02.2014 and 12.10.2010. He submitted that unless and until plaintiffs-respondents No.1 and 2 establish their ownership, they cannot claim any injunction. The learned District Judge was not justified in interfering with the discretionary order passed by the learned trial Judge.

4. I have considered the submissions advanced by Mr. Sakhare. I have also perused the material on record. As noted earlier, the relationship of respondents No.1 and 2 with Dhondibai @ Laxmibai and Kondu is required to be established. The learned trial Judge held that except producing photographs of marriage ceremony of plaintiffs' son, no other evidence was produced on record. In the Appeal, respondents No.1 and 2 produced letters of Police Patil of Village Barvai and Vasambe dated 04.02.2014 and 12.10.2010 showing that they are the legal representatives of Dhondibai @ Laxmibai and Kondu. They had

also produced photographs of marriage of plaintiff No.1's son Mangesh showing that defendants attended the said marriage ceremony. The marriage invitation card indicates that father of defendants No.1 to 3 Baliram Gotiram Mundhe is a maternal uncle of Mangesh. The learned District Judge was, therefore, of the opinion that it cannot be said at this stage that respondents No.1 and 2 are falsely posing themselves as grand-daughters of Kondu. In that event, defendants would have certainly approached the criminal court.

5. In paragraph 8, the learned District Judge noted that Kondu became owner of the suit land under the provisions of the Act and mutation entry No.612 stands in his name. Defendants are disputing tenancy rights of Kondu on the ground that the purchase price of the suit land was deposited by their forefathers. The learned District Judge also noted that on 06.05.2008, defendants entered into registered agreement to sale in respect of two lands bearing Survey No.122/2 and 122/3. In other words, the apprehension of the respondents No.1 and 2 that the defendants intended to create third party interest is well founded.

6. 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:

“....., 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)

“....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'.”

7. 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.

8. After considering the material on record as also reasons given in paragraphs 7 and 8 of the District Court's judgment, I am of the opinion that the learned District Judge rightly interfered with the discretion exercised by the trial Court. The learned trial Judge had exercised the discretion arbitrarily and ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. The learned District Judge rightly observed that the trial Court committed error in holding that there is no relationship between the parties at interlocutory stage. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

(R. G. KETKAR, J.)