

Mr. G. S. Godbole, Senior Advocate i/b. Mr. Parag M. Tilak and Mr. Sumit S. Kothari for Petitioner.
Mr. U. B. Nighot for Respondents.

P.C. :

2. By this Petition under Article 227 of the Constitution of India, original plaintiff has challenged the judgment and order dated 14.09.2015 passed by the learned Ad-hoc District Judge-1, Khed-Rajgurunagar, District Pune in Miscellaneous Civil Appeal No.138 of 2014. By that order, the learned District Judge allowed the Appeal preferred by the respondents, hereinafter referred to as defendants, and quashed and set aside the judgment and order dated 01.09.2014 passed by the learned Civil Judge, Junior Division, Junnar below exhibit-5 in R.C.S.No.356 of 2013. The learned District Judge dismissed the application exhibit-5 made by the petitioner, hereinafter referred to as the plaintiff, for temporary injunction restraining defendants from causing obstruction to his peaceful possession of land admeasuring 44 Ares out of total 1 Hectare, 76 Ares from the southern side of Gat No.871 situate at Mauje, Taluka Junnar, District Pune (for short 'suit land').

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Shantaram Vithoba Naikodi, (ii) Dattatraya Vithoba Naikodi, and (iii) Ganpat Keru Maskare (defendant No.1) had purchased 1 Hectare 76 Ares out of 1 Hectare 95 Ares land of Gat No.872-A. Out of this 1 Hectare 76 Ares, eastern portion admeasuring 0.99.75 Ares belonged to one Shri Maruti and western southern portion admeasuring 1 Hectare 1 Ares belonged to one Shri Suryakant. He submitted that along with the plaint, plaintiff had annexed rough sketch indicating separate possession of the four purchasers in respect of 44 Ares each. Accordingly, plaintiff is in possession of southern portion admeasuring 44 Ares out of 1 Hectare 76 Ares of Gat No.872/A. Each of the purchasers have constructed separate houses in their respective portions. The electricity connections are also separately in favour of these four persons. In short, he submitted that as per the rough sketch annexed to the plaint, each person is in possession of separate and distinct portion admeasuring 44 Ares each. After considering the material on record, by giving cogent reasons, the learned trial Judge allowed the application. However, the learned District Judge interfered with the discretionary order passed by the learned trial Judge. The learned District Judge allowed the appeal mainly on the ground that in the sale deed dated 26.05.1998, there is no reference that specific 44 Ares area was allotted to the plaintiff so also 7/12 extract of the suit land does not show possession of the plaintiff over specific portion of 44 Ares. The learned District Judge also noted that prima facie, there is no material to show that partition was effected between the parties. In other words, the learned District Judge held that purchasers are in joint possession of 1 Hectare 76 Ares from Gat No.872/1. He, therefore, submitted that in case the Court is not inclined to interfere with the impugned order, the joint possession of the plaintiff may be directed.

4. On the other hand, Mr. Nighot supported the impugned order. He submitted that the learned District Judge has considered the material on

record as also the fact that while granting injunction, the learned trial Judge did not consider whether prima facie case is made out, whether the balance of convenience lies in favour of the plaintiff as also whether irreparable loss would be caused to the plaintiff by refusing injunction. He submitted that while considering the application for injunction, the Court has to consider whether the plaintiff has made out the prima facie case, whether the balance of convenience lies in favour of the plaintiff and whether irreparable loss and hardship would be caused by refusing the injunction. As the learned trial Judge did not consider these aspects, it has to be concluded that the learned trial Judge did not properly apply the principles regulating the grant or refusal of the injunction and the learned District Judge was justified in interfering with the impugned order.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. 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.”

6. The moot question is whether the learned District Judge was

justified in interfering with the discretionary order passed by the learned trial Judge. With the assistance of the learned Counsel appearing for the parties, I have perused the sale deed dated 26.05.1998 by which plaintiff, defendant No.1 and two others purchased 1 Hectare 76 Ares. Perusal of the sale deed prima facie does not indicate that specific 44 Ares was purchased by the purchasers including the plaintiff. The 7/12 extract also does not show possession of the plaintiff over specific portion admeasuring 44 Ares. Prima facie, there is no material to indicate that partition was effected among the purchasers. The learned District Judge has considered this aspect in paragraphs 16 to 19 of the impugned order. The learned District Judge was also prima facie of the view that the injunction cannot be granted against the co-owners. In paragraph 21, it was observed that the electricity bills do not mention Gat number. In paragraph 22, the learned District Judge recorded that plaintiff failed to prove his prima facie case, balance of convenience does not lie in his favour and that plaintiff will not suffer irreparable loss if injunction is not granted against the defendants. It has further observed that the learned trial Judge did not properly examine basic ingredients namely, prima facie case, balance of convenience and who will suffer irreparable loss.

7. After considering the material on record, I do not find that the learned District Judge committed any error in interfering with the order passed by the learned trial Judge. The learned trial Judge has passed perverse and arbitrary order and has not applied the principles regulating the grant or refusal of injunction. 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. Liberty is reserved to the plaintiff to take out appropriate applications for protecting his joint possession as also for appointing survey officer for demarcating the

property. If such applications are taken out, all contentions of the defendants are expressly kept open and the learned trial Judge will decide those applications on the basis of material on record and in accordance with law. Order accordingly.

(R. G. KETKAR, J.)

Minal Parab