

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11017 OF 2014

Smt. Parvati Chandar Tandel

.. Petitioner

VS.

M/s. Bombay Construction &
Engineers Co. Pvt. Ltd. & ors.

.. Respondents

Mr. Shailendra Mishra i/b ARM Legal for the Petitioner.

Mr. M.M. Vashi, Sr. Advocate a/w. Mr. Makarand Kale i/b M.P. Vashi
& Associates for Respondent No.1.

Mr. Pankaj Das for Respondent Nos.3 and 4.

Mr. S.D. Rayrikar, AGP for Respondent Nos.5 and 6.

CORAM : M. S. SONAK, J.

DATE : 14 JANUARY, 2015

P.C. :-

1] This petition under Article 227 of the Constitution of India takes exception to the judgment and order dated 17 October 2014 made by the District Judge-3, Raigad allowing appeal against the order dated 16 November 2013 made by Civil Judge, Junior Division (Trial Court) granting relief of injunction, restraining, *inter alia*, the carrying on construction by respondent No.2 in the suit property.

2] Mr. Mishra, learned counsel for the petitioner took me to the order passed by the Trial Court on 16 November 2013 and emphasized upon the reasoning recorded therein, for the purposes

of grant of injunction. In particular, learned counsel pointed out that although respondent No.1 herein claims rights to the suit property on basis of conveyance executed by respondent No.2 (petitioner's sister), the said respondent No.2, has in terms stated that she intended to convey only her rights in the suit property and the conveyance was by no means intended to convey the rights of the petitioner in the suit property. Learned counsel for respondent petitioner further submitted that respondent No.1 has taken undue advantage of illiteracy of respondent No.2 and on the said basis not only practice fraud against respondent No.2, but further has usurped the petitioner's right to the suit property, without any cause or justification. Learned counsel further pointed out that the Appeal Court has interfered with the injunction order dated 16 November 2013, primarily by adverting to certain photographs, which may indicated that the construction is at the advanced stage. However, the Appeal Court ought to have considered the situation at the stage when the injunction order was made by the Trial Court on 16 November 2013 or rather at the stage when the petitioner instituted the suit and applied for interim reliefs. Non consideration of this vital aspect, vitiates the impugned judgment and order, which ought to be interfered with by this Court in the exercise of its extra ordinary jurisdiction.

3] At one stage, learned counsel for the petitioner had also made grievance with regard to non-service of notice by the Appeal Court. However, upon ascertainment of true and correct facts, such grievance was withdrawn.

4] Having considered the contentions raised by the learned counsel for the petitioner and perused the record, in my judgment, no case is made out to interfere with the impugned judgment and order dated 17 October 2014. Soon after the Trial Court granted injunction on 16 November 2013, respondent No.1 preferred Civil Misc. Appeal No.121 of 2013 and therein on 30 December 2013 obtained a stay upon the operation and execution of the injunction order dated 16 November 2013. Though the order dated 30 December 2013 was made *ex-parte*, the same records that photographs of the suit site were produced which indicated that the construction upon the suit property had reached at an advanced stage. In the impugned order as well, the Appeal Court records that the construction in question is complete to the extent of almost 15 storeys. There is material on record which will otherwise indicate that by the time the suit came to be instituted, the construction work already commenced. There is no serious explanation as to what prevented the petitioner from approaching the Trial Court with

promptitude. Now that respondent No.2 has supported the case of the petitioner, there is again no explanation as to what prevented the petitioner from taking steps with regard to the conveyance executed by respondent No.2 in favour of respondent No.1, at an early date. The issues raised by the petitioner, though contentious, would require a trial for the purpose of effective resolution. It is the case of respondent No.1 that not only the construction is on the verge of completion, but further third party rights have also been created therein. In such circumstances, no useful purpose would be served by either stalling the construction or imposing any further restraint upon respondent No.1. Needless to note that all actions of respondent No.1 *qua* the suit property, would always be subject to the final decision in the suit instituted by the petitioner.

5] In making the impugned order, the Appeal Court has neither erred on principle nor the findings recorded therein are vitiated by perversity or unreasonableness. In such circumstances, there is no case to interfere with the impugned order. It is made clear that whatever observations have been made in the impugned order or for that matter the present order, the same are only in the context of the consideration of motion for interim reliefs. The same shall not be taken into consideration at the stage of final disposal of the suit.

6] Accordingly, subject to observations that whatever development or transfers which respondent No.1 effects in relation to the suit property, shall be subject to the final decision in the suit, no case is made out to interfere with the impugned judgment and order. The Trial Court shall endeavour to expeditiously dispose of the suit.

7] In view of above, petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)

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