

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.469 OF 2016**

1. Popat Gangaram Gaikwad and Ors.	Vs	Petitioners
Arshad Usman Tamboli		.. Respondent

Mr. D.V.Sutar i/b Ms Shilpa R. Mangale, Advocate for Petitioners.

CORAM : R.G.KETKAR,J.
DATE : 26/02/2016

PC:

1. Heard Mr. D.V.Sutar, learned counsel for the petitioners at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the Judgment and order dated 18.11.2015 passed by the learned District Judge-1, Barshi in Civil Misc. Appeal No.32 of 2014. By that order, the learned District Judge allowed the appeal preferred by the respondent, hereinafter referred to as 'plaintiff', and quashed and set aside the judgment and order dated 2.1.2013 passed by the learned Civil Judge, Jr. Dn, Karmala, below Exhibit 5 in R.C.S No.118 of 2012 and allowed the application Exh.5 made by the plaintiff. The learned District Judge issued injunction restraining the petitioners, hereinafter referred to as 'defendants', from obstructing the peaceful possession of the plaintiff over the agricultural land, admeasuring 0.33 Ares, out of Block no.20/1-A

situate at Village Karmala, District Solapur, as more particularly described in paragraph 1 of the Plaint (for short, suit land').

3. The plaintiff instituted suit for perpetual injunction restraining the defendants from causing obstruction to his peaceful possession over the suit land. During the pendency of the suit, the plaintiff took out application Exhibit-5 for temporary injunction. The defendants filed written statement and say to application Exhibit-5 opposing both the suit as well as the application for temporary injunction. By the judgment and order dated 2.1.2013, the learned trial Judge rejected the application. Aggrieved by that decision, the plaintiff preferred appeal which is allowed by the impugned order. It is against that decision, the defendants have instituted the present petition.

4. Mr. Sutar submitted that the suit land belonged to Suryabhan Gaikwad, brother of defendant no.1. Suryabhan died leaving behind widow-Ashabai Gaikwad and daughter-Bharati Pingale. Said Ashabai and Bharati Pingale executed registered sale deed on 14.6.2011 in favour of the plaintiff. He submitted that though there is recital in the sale deed that they have handed over possession to the plaintiff, the plaintiff is not in possession. On the contrary, as Suryabhan was residing in Indapur, District Pune, he executed writing in favour of defendant no.1 and permitted defendant no.1 to cultivate suit land. On the basis of the said writing, the defendants are in possession. As the

defendants are in possession, the plaintiff cannot obtain possession from them without following due process of law. He, therefore, submitted that the learned District Judge was not justified in allowing the appeal and issuing injunction against the defendant.

5. I have considered the submissions advanced by Mr. Sutar. I have also perused the material on record. Perusal of paragraph 9 of the order of the trial Court shows that the learned trial Judge, after considering the material on record, observed that the material does not make the picture clear whether the plaintiff is in possession or defendants are in possession. The learned trial Judge further observed that the plaintiff suppressed the filing of suit, being R.C.S. No. 80 of 2012 by defendant no.2 and pendency of that suit. In other words, the plaintiff did not approach the Court with clean hands and is not entitled to injunction.

6. As against this, the learned District Judge in paragraph 9 noted that in pursuance of the sale deed executed in favour of the plaintiff, his name has been mutated in Record of Rights. The said entry was not challenged by the defendants. Even in the sale deed, there is recital that Ashabai and Bharti handed over possession of the suit land to the plaintiff. The learned District Judge, therefore, held that the plaintiff has established his possession over the suit land.

7. As far as filing of suit by defendant no.2 is concerned, the said aspect was considered in paragraph 11 and it was observed that till date no interim order on merits or otherwise was passed in that suit and suit is sub-judice. It was further observed that the plaintiff was not served with the suit summons even pending hearing of application Exh.5 of the present suit and, therefore, it cannot be said that the plaintiff was guilty of suppression of material facts because the said fact was not within the knowledge of the plaintiff while instituting the present suit.

8. In paragraph 13, the learned District Judge also observed that the defendants did not place on record documentary evidence sufficient to rebut the plea of the plaintiff. On one hand, the defendants contended that they are in possession as per oral agreement between defendant no.2 and Suryabhan, predecessor-in-title of the plaintiff, and on the other defendant no.1 claims tenancy. The learned District Judge observed that both the pleas are inconsistent to each other and are not sufficient to discard the case of the plaintiff.

9. In my opinion, it cannot be said that the learned District Judge committed any error while interfering with the discretionary order passed by the learned trial Judge. Perusal of the trial Court's order shows that the learned trial Judge did not apply principles governing the grant or refusal of ad-interim order.

10. 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.”

11. Applying the tests laid down in the above decision, it cannot be said that the learned District Judge committed any error in interfering with the discretionary order passed by the learned trial Judge. Hence, Petition fails and the same is dismissed.

(R.G.KETKAR, J.)