

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3123 OF 2016

Bhagvan Ganpati Mane ... Petitioner
Vs.
Abdul Abbas Boabade ... Respondent

Mr. Anilkumar K. Patil for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : MARCH 16, 2016

P.C. :

Heard Mr. Patil, learned Counsel for petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 25.01.2016 passed by the learned District Judge-5, Kolhapur in Miscellaneous Civil Appeal No.38 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 09.01.2014 passed by the learned Joint Civil Judge, Junior Division, Peth-Vadgaon below exhibit-5 in R.C.S.No.94 of 2013. The learned District Judge allowed the application exhibit-5 and issued injunction against the petitioner, hereinafter referred to as defendant, restraining the defendant from causing obstruction to the peaceful possession of the plaintiff over the land admeasuring 0-01.59.85 Ares out of 2 Hectares 09 Ares of Gat No.2813 situate at Mauje Bhadole, Taluka Hatkanangale, District Kolhapur (for short 'suit property'), till the final disposal of the Suit.

3. Plaintiff instituted Suit for perpetual injunction restraining the defendant from causing obstruction qua his possession over the suit

property. Pending that Suit, plaintiff took out application exhibit-5 for temporary injunction restraining the defendant from causing obstruction to his peaceful possession. Defendant filed written statement as also reply to exhibit-5 at exhibit-11 opposing the Suit as also application. By order dated 09.01.2014, the learned trial Judge rejected the application.

4. Mr. Patil took me through the trial Court's order, and in particular paragraphs 5 to 7 and submitted that the learned trial Judge considered the photographs as also other documents produced by the defendant and recorded a finding that defendant is in possession of the suit property. The learned trial Judge also considered provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (for short 'Act'), which prohibited creation of fragment. By the sale deed dated 08.08.2012, plaintiff claims to have purchased the suit property admeasuring 0 Hectare 0.1.59.85 Ares equivalent to 1720 sq.ft. In view of the provisions of the Act, there is a prohibition for purchasing land which has the effect of creation of fragment. In paragraph 7, the learned trial Judge observed that defendant did not handover possession to Raghunath Katkar and the transaction between defendant and Raghunath Katkar was only for securing repayment of loan amount. As against this, Mr. Patil submitted that the learned District Judge did not record any categorical finding to the effect that the plaintiff is in possession of the suit property. He, therefore, submitted that the learned District Judge was not justified in interfering with the discretionary order passed by the learned trial Judge.

5. I have considered the submissions advanced by Mr. Patil. I have also perused the material on record. It is the case of the plaintiff that on 22.03.2000, defendant sold portion of land bearing Gat No.2813 to one Raghunath Dhondiba Katkar. Raghunath Katkar, in turn, executed the

registered sale deed dated 08.08.2012 in favour of the plaintiff for consideration of Rs.76,000/-. Plaintiff's name is also mutated in 7/12 extract. The learned District Judge also dealt with the contention of the defendant that the transaction dated 22.03.2000 between defendant and Raghunath Katkar was a nominal transaction and was entered into only as and by way of security for repayment of hand loan amount of Rs.15,000/-. The learned District Judge observed that till date, defendant did not challenge the sale deed executed on 22.03.2000. In fact, defendant executed a registered deed for rectification of anewari in favour of Raghunath Katkar, who subsequently executed the sale deed in favour of the plaintiff. The learned District Judge observed that the submission of the defendant that the sale deed is nominal, prima facie, cannot be accepted in view of the execution of the rectification deed. The learned District Judge also dealt with the provisions of the Act and held that the Suit is not barred under Section 36 of the Act.

6. Perusal of paragraphs 8 to 10 of the appellate Court's judgment shows that after considering the material on record, the learned District Judge found that plaintiff is in possession. His name is also mutated in 7/12 extract. 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. After considering the material on record as also reasons given in paragraphs 8 to 10 of the appellate 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. 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. It is needless to observe that while deciding the Suit, the learned trial Judge will decide the same on the basis of evidence on record and uninfluenced by the observations made in this order and the impugned order. Order accordingly.

(R. G. KETKAR, J.)