

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6394 OF 2015

Shree Ganesh Developers through its Partner
Sachin Tukaram Bhuruk ... Petitioner
Vs.
Takshashila Promoters and Developers and others ... Respondents

Mr. P. S. Dani, Senior Advocate i/b. Mr. Chaitanya Nikte for Petitioner.
Mr. Sandeep Waghmare for Respondents.

CORAM : R. G. KETKAR, J.
DATE : MARCH 04, 2016

P.C. :

Heard Mr. Dani, learned Senior Counsel for petitioner and
Mr. Waghmare, learned Counsel for respondents at length.

2. By this Petition under Article 227 of Constitution of India, petitioner has challenged the judgment and order dated 29.11.2014 passed by the learned 17th Joint Civil Judge Junior Division, Pune below exhibit-5 in Regular Civil Suit No.651 of 2013 as also the judgment and order dated 02.04.2015 passed by the learned District Judge-11, Pune in Miscellaneous Civil Appeal No.453 of 2014. By these orders, the Courts below rejected the application made by the petitioner, hereinafter referred to as plaintiff, seeking injunction against the defendants from causing any obstruction to the plaintiff from using the right of way, more particularly described in paragraph 1(b) which is located in property described in paragraph 1-c of the plaint for approaching their property namely, plot No.B-1 admeasuring 5315 sq.ft. and plot No.B-4 admeasuring 4842 sq.ft., more particularly described in paragraph 1(a) of the plaint.

3. Plaintiff has instituted Suit for declaration and perpetual

injunction inter alia contending that plaintiff has purchased plot No.B-1 and plot No.B-4 by registered sale deeds dated 24.08.2012 and 01.11.2012 from Dr. Lata Raje and Nitin Raje as also Ms Neela Kushte and Dilip Kushte respectively. In these sale deeds, there is a specific recital that for approaching plots No.B-1 and B-4 from Marunji-Jambe and Nere main road, there is a 30 ft. wide road, more particularly described in paragraph 1(b) of the plaint, which is located in property described in paragraph 1(c) of the plaint. He submitted that for approaching plots No.B-1 and B-4, plaintiff has no other alternate way. The Courts below however, rejected the application on the ground that in the sale deeds, there is no recital to the effect that for approaching plots No.B-1 and B-4, there is right of way as mentioned in paragraph 1(b) of the plaint, which is located in paragraph 1(c). In addition to this, the learned District Judge recorded that plaintiff has other alternate way for approaching these plots. However, there is no other alternate way except the way described in paragraph 1(b) of the plaint. He, therefore, submitted that the Courts below committed serious error in rejecting the application.

4. On the other hand, Mr. Waghmare supported the impugned orders. He submitted that after considering the material on record, the Courts below concurrently held that plaintiff has no right of using way as described in paragraph 1(b), which is located in the property described in paragraph 1(c) of the plaint, which belongs to defendants No.1 and 2. He, therefore, submitted that no case is made out for interfering with the discretionary orders passed by the Courts below.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. On 18.03.1998, defendant No.1 executed the sale deed in favour

of Dr. Lata Nitin Raje and Nitin Raje. Recitals I and J read thus,

“[I] The Vendor has prepared a Lay out of various sizes of Plots and developing the Said Agricultural Land at his Own cost and allotting the Plots to various prospective purchasers;

J] The Purchaser herein approached the Vendor and requested him to allot the Plot No.B-1 admeasuring 4.9 Ares i.e. 5315 sq.ft. referred to as Said Plot of Land out of the Said Agricultural Land and offered to pay an amount of Rs.2,39,175/- (Rupees Two Lakhs Thirty Nine Thousand One Hundred Seventy Five only) which offer of the Purchaser was found to be suitable and as per the prevalent market rate and thus accepted by the Vendor herein and the Parties hereto have decided to reduce into writing the terms and conditions of this Indenture of Sale;”

6. Along with this sale deed, map is attached (at page 105). In this map, 30 ft. wide road from Maruni-Jambe and Nere main road is shown in the property described in paragraph 1(b), which is located in the property described in paragraph 1(c) of the plaint. Perusal of the recital in the sale deed, however, prima facie, does not indicate that for approaching plot No.B-1, right of way as shown in paragraph 1(b) through property described in paragraph 1-c is shown. On 30.03.1998, defendant No.1 sold plot No.B-4 to Dr. Neela Kushte and Dilip Kushte. Perusal of the recital in the sale deed also prima facie does not indicate that the right of way as shown in paragraph 1(b) is shown in the property described in paragraph 1(c) of the plaint. On 24.08.2012, Raje's executed sale deed in favour of the plaintiff and on 01.11.2012, Kushte's executed the sale deed in favour of the plaintiff. Perusal of these two sale deeds also prima facie do not indicate right of way as shown in paragraph 1(b) passes through property described in paragraph 1(c) of the plaint.

7. This aspect is considered by the learned trial Judge in paragraph 13. After considering the various sale deeds, the learned trial Judge has recorded a prima facie finding that the sale deeds do not record

existence of any right of way as alleged by the plaintiff. The learned trial Judge also noted in paragraph 16 that plaintiff did not rely upon any affidavit of adjoining plot holders to place on record that plaintiff and other plot holders were using the right of way as shown in paragraph 1-b of the plaint.

8. As far as the appellate Court is concerned, the appellate Court has also dealt with this aspect in paragraphs 7 and 8 and upheld the findings recorded by the learned trial Judge. In addition, in paragraph 9, the learned District Judge noted that from the revenue map of Village-Marunji, it transpires that there is alternate access way to the suit plots other than the suit way, which is not at all pleaded by the plaintiff. The plaintiff has suppressed this material fact which dis-entitles it to claim any equitable and discretionary relief of temporary injunction. Prima facie, I do not find that the learned District Judge committed any error in recording this finding. As noted earlier, perusal of the layout shows that apart from plots No.B-1 and B-4, there are several other plots. No other plot holder has made any complaint against defendants No.1 and 2. Finding recorded by the learned District Judge prima facie appears to be plausible. Both the Courts below have concurrently declined to grant any interim relief.

9. 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'.”

10. Applying the tests in the above decision, it cannot be said that the Courts below failed to apply the principles regulating grant or refusal of interlocutory injunctions. Hence, Petition fails and the same is dismissed. Plaintiff is at liberty to make application in the trial Court for deciding the Suit in a time bound manner. If such application is made, the learned trial Judge will decide the same in accordance with law.

(R. G. KETKAR, J.)

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