

Mr. A. A. Kumbhakoni, Senior Advocate i/b. Mr. S. S. Redekar for Petitioners.
Mr. Amrut Mukund Vernekar for Respondents No.1 to 4.

P.C. :

Heard Mr. Kumbhakoni, learned Senior Counsel for petitioners and Mr. Vernekar, learned Counsel for respondents No.2 to 4 at length. Mr. Kumbhakoni states that respondent No.1 has expired on 02.10.2016 leaving behind respondents No.2 and 3 as her legal representatives. Since they are already on record, he seeks permission to delete respondent No.1. He also states that necessary steps will be taken in the trial Court in this regard. In view thereof, leave to delete respondent No.1 is granted. Amendment shall be carried out forthwith.

2. By this Petition under Article 227 of the Constitution of India, petitioners, hereinafter referred to as 'plaintiffs', have challenged the judgment and order dated 30.04.2016 below exhibit-5 in Regular Civil Suit No.77 of 2015 passed by the learned Joint Civil Judge, Junior Division, Palghar as also the judgment and order dated 12.08.2016 in Miscellaneous Civil Appeal No.27 of 2016 passed by the learned District Judge-1, Palghar. By these orders, the Courts below dismissed the application made by the plaintiffs for injunction restraining the defendants from causing obstruction to their possession in respect of land bearing Gat No.7 admeasuring 1 H. 42.40 R situate at Alewadi; Gat No.177-A admeasuring 0H. 16 R and Gat No.177-B admeasuring 0H.

12.40 R both situate at village Nandgaon (for short 'suit property').

3. In support of this Petition, Mr. Kumbhakoni has taken me through the plaint instituted by the plaintiffs and in particular paragraphs 6(e) and (g) as also the table reproduced therein for the purpose of showing implementation of family arrangement that was effected on 12.11.1982.

4. Mr. Kumbhakoni has invited my attention to-

(i) Mutation entry No.1888, which was certified in the year 1979 in respect of Survey No.19 (part) and Survey No.20, which are now undisputedly Gat Nos.177-A and 177-B, among other lands. Deorao Vishnu Naik gave Vardi application dated 10.05.1979 for entering name of Shrikant, father of plaintiff No.3. On that basis, mutation entry was certified in the year 1979;

(ii) Mutation entry No.2214. Mr. Kumbhakoni submitted that family arrangement was effected on 12.11.1982. On 21.07.1984, Shrikant, father of plaintiff No.3 gave application for entering name of plaintiff No.3 on the ground that he is in possession of Survey No.19 (part) and Survey No.20 i.e. Gat No.177-A and 177-B. Mutation entry was certified in the year 1984;

(iii) Mutation entry No.567. On 10.05.1979, Deorao Vishnu Naik gave application for entering name of his younger son Shri Ravindra Deorao Naik in respect of 14, 17/1, 17/2, 17/3, 17/4 and 17/5, which is now Gat No.7. On the basis of the application and statement of Deorao, mutation entry was certified on 30.08.1979 and name of Shri Ravindra Deorao Naik was entered;

(iv) Mutation entry No.23. Mr. Kumbhakoni submitted that as family arrangement was effected on 12.11.1982, application was made by Ravindra Deorao Naik on 21.07.1984 for entering name of plaintiff No.3 on the ground that he is in possession.

Accordingly, mutation entry No.23 was certified on 25.01.1985.

5. Mr. Kumbhakoni submitted that these mutation entries are appearing since 1984 till date. In view of Section 157 of the Maharashtra Land Revenue Code, 1966, there is presumptive value to the long standing revenue entries. The mutation entries and the revenue record clearly establish that family arrangement of 12.11.1982 was implemented and acted upon.

6. Mr. Kumbhakoni submitted that the Courts below rejected the application relying mainly on electricity bill, telephone bill and land revenue receipts. He submitted that plaintiff No.3 is in possession of Gat No.7 admeasuring 1 H. 42.40 R situate at Alewadi as also Gat No.177-A admeasuring 0H. 16 R and Gat No.177-B admeasuring 0H. 12.40 R both situate at Village Nandgaon.

7. On the other hand, Mr. Vernekar supported the impugned orders. He has taken me through the - (i) communication dated 14.05.2015 addressed by Sub-Inspector of Police, Satpati Police Station to Village Development Officer, Grampanchayat Alewadi; (ii) response of Grampanchayat Alewadi dated 29.05.2015; (iii) village form No.8 for the year 2014-2015 in respect of house property bearing No.443 standing in the name of Shree Ravindra Naik; (iv) application dated 20.12.2006 made by Shree Ravindra Naik to Grampanchayat for building permission; (v) building permission dated 29.12.2006 given by Grampanchayat under Section 52 of the Bombay Village Panchayat Act; (vi) communication dated 04.06.2015 addressed by Police Sub-Inspector, Satpati Police Station to Tahsildar, Palghar in respect of Gat No.177-A and 177-B; (vii) response dated 20.06.2015 of Circle Officer, Tarapur to Tahsildar, Palghar. He submitted that these documents

clearly establish that Shree Ravindra Naik is in possession of Gat No.7 situate at Alewadi and Gat No.177-A and 177-B situate at Nandgaon and that land revenue is paid by Shree Ravindra Naik. He, therefore, submitted that no case is made out for invocation of powers under Article 227 of the Constitution of India.

8. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. The short question is whether plaintiffs have made out a *prima facie* case by establishing their possession over these properties and whether balance of convenience lies in favour of the plaintiffs and lastly, whether irreparable loss and hardship will be caused to the plaintiffs in the event of relief of injunction is refused.

9. After appreciating the material on record, the Courts below have concurrently held that plaintiffs have not established their possession over these properties. In particular, the learned District Judge has considered this aspect from paragraph 19 onwards. After considering the material on record, the learned District Judge has upheld the findings recorded by the learned trial Judge. With the assistance of the learned Counsel appearing for the parties, I have also gone through the material on record. Mr. Kumbhakoni relied upon the mutation entries. *Prima facie*, in these entries, no reference is made to family arrangement of 12.11.1982. At the same time, the documents relied by Mr. Vernekar referred in paragraph 7 above *prima facie* show possession of the defendants. In view thereof, I do not find any good reason to take a different view from the one taken by the Courts below. The findings recorded by the Courts below cannot be termed as perverse so as to warrant interference by this Court under Article 227 of the Constitution of India. In the case of ***Wander Limited and another Vs. Antox India***

Private Limited, 1990 (Supp.) SCC 727, the Apex Court has laid down the scope of appellate Court for interfering with the discretionary order passed by the trial Court. It has been observed in paragraph 14 thus,

“....., 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.”

(emphasis supplied)

10. In the case of ***Surya Dev Rai Vs. Ram Chander Rai, (2003) 6 SCC 675***, the Apex Court has dealt with powers of High Court under Articles 226 and 227 of the Constitution of India, and observed in clauses (4), (5) and (7) of paragraph 38 as under:

“(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied : (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (iii) a grave injustice or gross failure of justice has occasioned thereby.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.”

11. Applying the tests laid down in the case of **Wander Limited** (*supra*), the learned District Judge rightly did not interfere with the discretionary order passed by the learned trial Judge. It cannot be said that the learned trial Judge exercised the discretion arbitrarily, or capriciously or perversely or that the trial Court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions.

12. Applying the tests laid down in the case of **Surya Dev Rai** (*supra*), no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed. It is needless to mention that these observations are tentative and *prima facie*. The learned trial Judge will decide the Suit on the basis of material on record and in accordance with law, uninfluenced by the observations made in the impugned orders and this order. Order accordingly.

(R. G. KETKAR, J.)