

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition NO. 11909 OF 2015

Shri Dhanaji Rangnath Jadhav
And Ors.

...Petitioners

Versus

Dattatraya Krishna Dixit
And Ors.

...Respondents

....
Mr. Prathamesh B. Bhargude, Advocate for the Petitioners.

....

CORAM : R. G. KETKAR, J.

DATE : 4th May, 2016

P.C.

1. Heard Mr. Prathamesh Bhargude, 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 31.3.2010 passed by learned Civil Judge, Junior Division, Khandala below Exhibit-41 in R.C.S. No.28/2008 as also the judgment and order dated 2.9.2015 passed by learned District Judge-3, Satara in Misc. Civil Appeal No.73/2010. By these orders, the Courts below allowed the application Exhibit-41 made by the respondents, hereinafter referred to as the defendants, for temporary injunction restraining the petitioners, hereinafter referred to as the plaintiffs, from causing any

obstruction to their possession over the suit property.

3. It is the case of the plaintiffs that the defendants executed agreement of sale dated 7.2.1997 in respect of the suit property. One of the conditions was that the vendor will obtain permission from the District Rehabilitation Officer, Satara for sale of the suit property as also for re-grant of the land from new tenure to old tenure basis and thereafter the sale deed was to be executed. Vendor made application on 11.7.2007 for sale permission which was granted on 5.8.2007. The plaintiffs thereafter issued notice on 9.1.2008 to the defendants calling upon them to execute the sale deed. This was replied on 5.2.2008. The plaintiffs have instituted the suit for specific performance of the contract as also for perpetual injunction. During pendency of the Suit, the plaintiffs took out application Exhibit-5 for temporary injunction restraining the defendants from creating third party interest. On 31.3.2010, learned trial Judge allowed the application and restrained the defendants from creating third party interest. Aggrieved by this decision, the defendants preferred Misc. Civil Appeal which was dismissed on 2.9.2015. In fact while allowing the application of injunction filed by the plaintiffs, the Courts below also recorded a finding

about execution of the agreement for sale. The defendants thereafter filed counter claim on or about 13.10.2008 for perpetual injunction restraining the plaintiffs from causing obstruction to their possession. They also took out application Exhibit-41 for temporary injunction. The plaintiffs filed reply opposing the application. The Courts below allowed that application. It is against these orders, the plaintiffs have instituted the present petition.

4. Mr. Bhargude strenuously submitted that in the agreement of sale dated 7.2.1997 there is a recital that the defendants have handed over actual and physical possession to the plaintiffs. From that date onwards the plaintiffs are in settled possession. He submitted that there was no occasion for seeking injunction restraining the defendants from causing obstruction to their possession. Application for injunction restraining defendants from creating third party interest was allowed by the Courts below and the defendants did not challenge that order. In other words, said orders have attained finality. It is only thereafter the defendants have set up counter claim for perpetual injunction and filed application for temporary injunction which is allowed by the Courts below. He

submitted that in the reply dated 5.2.2008, the defendants denied the transaction between the parties. However, recital in the agreement of sale clearly records that the plaintiffs were put in possession of the suit property. He also invited my attention to the reply dated 4.3.2008 filed by defendant No.1 to the plaintiffs application for injunction and in particular paragraph-4 thereof. Perusal of paragraph-4 shows that the defendants did not dispute execution of agreement of sale. What was contended therein was possession handed over to the plaintiffs in pursuance of agreement of sale dated 7.2.1997 is contrary to the provisions of Maharashtra Resettlement of Project Affected Persons Act, 1986. He therefore submitted that the Courts below committed error in allowing the application filed by the defendants.

5. He further submitted that the Courts below allowed the application filed by the defendants on two grounds, namely, in 7/12 extract name of the plaintiffs is not recorded and other ground is though the agreement of sale is executed on 7.2.1997 the suit is instituted in the year 2008. He relied upon the decision of Apex Court in the case of ***Gunwantbhai Mulchand Shah and others vs. Anton Elis Farel and others, (2006) 3***

SCC 634 to contend that the question whether the plaintiffs have instituted the suit within a reasonable time can be gone into at the stage of final hearing of the suit and not at the interlocutory stage.

6. I have considered the submissions advanced by learned Counsel appearing for the petitioners. I have also perused the material on record. It is not in dispute that the plaintiffs have instituted the suit for specific performance of agreement of sale dated 7.2.1997. It is also evident that the defendants applied for sale permission on 11.7.2007 and the permission was granted on 5.8.2007. The plaintiffs have issued notice dated 9.1.2008. Perusal of this notice does not indicate that the plaintiffs asserted that they were put in possession of the suit property in pursuance of the agreement of sale dated 7.2.1997. That notice was replied by the defendants on 5.2.2008. Perusal of the reply shows that the defendants denied the transaction of agreement of sale. It is thereafter the plaintiffs have instituted the suit for specific performance. Perusal of the prayers in the suit does not indicate that the plaintiffs have prayed for perpetual injunction restraining the defendants from causing obstruction to their possession. By prayer clause (d),

the plaintiff sought temporary injunction without specifying the nature of injunction. In fact there is no substantive prayer for injunction. Perusal of the application for injunction filed by the plaintiffs at Exhibit-5 shows that in paragraph-4 the plaintiffs asserted that in pursuance of the agreement of sale they were put in possession and that till date they are in possession. However, the plaintiffs did not seek injunction restraining the defendants from obstructing their possession. The plaintiffs only sought injunction restraining the defendants from creating third party interest. Mr.Bhargude submitted that there was no occasion for the plaintiffs to sent notice at that time. I do not find any merit in this submission. As noted earlier, defendants have denied the entire transaction itself. The plaintiffs claim to be in possession. Though the plaintiffs applied for temporary injunction in the main suit, they ought to have prayed for temporary injunction restraining the defendants from causing obstruction to their possession. The very fact that having claimed relief of injunction restraining defendants from creating third party right, presupposes that the defendants are in possession of the suit property. After the injunction application filed by the plaintiffs was allowed, the defendants filed

application Exhibit-41. While allowing the application, learned trial Judge has considered 7/12 extract produced by the plaintiffs. After considering 7/12 extract, learned trial Judge observed that from the record *prima facie* the defendants are in possession of the suit property. As far as appellate Court is concerned, learned District Judge observed in paragraph-11 that having regard to the date of execution of the agreement for sale and the date of filing of the suit, the plaintiffs ought to have taken steps for performance of the agreement of sale. *Prima facie* the plaintiffs did not take any steps for getting specific performance of the contract and that leads to inference that the recital in the agreement of sale does not have any supporting material. The plaintiffs have instituted the suit nearly after 11 years after the date of agreement which is not a short period. In order to substantiate the case of the plaintiffs about their possession there should have been something more besides recital in the agreement for sale. All along revenue record shows possession of the defendants over the suit property.

7. In the light of the aforesaid discussion, I do not find that the Courts below committed any error in allowing the application for injunction filed by the defendants. Hence, no

case is made out for invocation of powers under Article 227 of the Constitution of India.

8. After considering the material on record, I do not find that the Courts below committed any error while considering the application filed by the defendants for granting injunction. It cannot be said that the Courts below have committed error in applying the principles regulating grant of injunction. 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."

9. In the light of the aforesaid discussion, I do not find any merit in the petition. Petition fails and the same is dismissed. It is made clear that the observations made in this order are *prima facie* and tentative for deciding the correctness of the impugned order. Learned trial Judge will decide the suit on the basis of the material on record and in accordance with law.

(R. G. KETKAR, J.)

Deshmane (PS)