

Revappa Veerappa Yadavannavar and another Vs.	...	Petitioners
Siddharud Redrappa Mense and others	...	Respondents

Mr. Vishwanath Patil i/b. Yuwraj Dhanraj Patil for Petitioners.

CORAM : R. G. KETKAR, J.
DATE : DECEMBER 20, 2016

P.C. :

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

2. By this Petition under Article 227 of the Constitution of India, petitioners, hereinafter referred to as 'defendants No.3 and 4', have challenged the judgment and order dated 02.08.2014 passed by the learned 3rd Joint Civil Judge, Senior Division, Solapur below exhibit-5 in Special Civil Suit No.76 of 2014 as also the judgment and order dated 20.10.2016 passed by the learned Ad-hoc District Judge-2, Solapur in Miscellaneous Civil Appeal No.118 of 2016. By these orders, the Courts below allowed application exhibit-5 filed by respondents No.1 to 4, hereinafter referred to as 'plaintiffs', and issued injunction restraining defendants No.3 and 4 from causing disturbance to the peaceful possession of the plaintiffs as also from creating third party interest or encumbrances over the suit properties.

3. Plaintiffs have instituted Suit inter alia praying for declaration that the sale deed dated 31.12.2013 executed by defendants No.1 and 2 in favour of defendants No.3 and 4 is illegal and not binding on the plaintiffs share; for perpetual injunction restraining defendants No.3 and 4 from causing obstruction to the plaintiffs' possession over the suit

property till such time, the partition is effected. Plaintiffs have also prayed for right of pre-emption by directing defendants No.1 and 2 to execute the sale deed in respect of half share, which defendants No.1 and 2 have sold to defendants No.3 and 4. In the alternative, plaintiffs have prayed for partition of their half share in the suit property. During the pendency of the Suit, plaintiffs filed application exhibit-5. Defendants No.1 and 2 filed written statement as also reply to exhibit-5. By order dated 02.08.2014, the learned trial Judge allowed the application exhibit-5. Aggrieved by this decision, defendants No.3 and 4 preferred Miscellaneous Civil Appeal. By order dated 20.10.2016, the learned District Judge dismissed the appeal. It is against these orders, defendants No.3 and 4 have instituted the present Petition.

4. In support of this Petition, Mr. Patil strenuously contended that the suit lands are the self-acquired properties / separate properties of defendants No.1 and 2. They are not the joint family properties. This fact is evident from the - (i) recitals in the sale deeds dated 31.12.2013; (ii) mutation entry No.2870, which was effected in the year 1962. Since 1962, the name of Revansiddha Sharanappa Menase is recorded; and (iii) mutation entry No.2399, which was standing in the name of Sharanappa, grandfather of defendants No.1 and 2 before 1962 and after 1962, mutation entry is in the name of father of defendants No.1 and 2. He submitted that in view of Section 157 of the Maharashtra Land Revenue Code, 1966, long standing revenue entries have presumptive value. He has also taken me through 7/12 extracts, village forms 8A and 16B to substantiate that this is a separate property of defendants No.1 and 2. Courts below were therefore, not justified in allowing application exhibit-5 filed by the plaintiffs.

5. I have considered the submissions advanced by Mr. Patil. I have

also perused the material on record. While allowing the application exhibit-5, the learned trial Judge observed that the suit property belongs to the joint family consisting of Sharanappa and grandfather of plaintiffs No.1 to 4-Golappa. Unless severance is shown by the defendants No.1 and 2, defendants No.1 and 2 cannot claim to have purchased specific portion in the property. The learned trial Judge also referred to Section 44 of the Transfer of Property Act, 1882 (for short 'Act') and observed that the stranger purchaser has right to institute the Suit for general partition.

6. As far as the appellate Court is concerned, the learned District Judge has referred to the document dated 22.04.1969 executed by mother of Golappa, Sharanappa and Rudrappa. By that document, property was given to Rudrappa and Revanappa. Rudrappa is from the branch of the plaintiffs and Revanappa is from the branch of the defendants. The learned District Judge, after considering the recitals in the document dated 22.04.1969 observed that the suit property is the joint family property of plaintiffs and defendants. In paragraph 16, the learned District Judge also referred to the receipts showing payment of Shetsara and noted that these receipts are coming from the custody of the plaintiffs. The learned District Judge also referred to the fact that defendants No.3 and 4 are not residing in Solapur but they are the residents of Bangluru. After considering the material on record, the learned District Judge held that the plaintiffs are in actual possession of the suit property. Defendants No.3 and 4 are not in possession of the suit property. Thus, the Courts below, after appreciating the material on record, have concurrently held that plaintiffs are in possession and defendants No.3 and 4 are not in possession of the suit property.

7. 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.”

8. 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.”

9. 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.

10. 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.

(R. G. KETKAR, J.)