

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 12550 OF 2015

SHRI KAVIDAS HARIBHAU SAWANT
AND ORS

...Petitioners

Versus

PADMASHRI ANNASAHEB JADHAV
BHARATIYA SAMAJ UNNATI MANDAL,
BHIWANDI

...Respondent

....

Mr. Atul G. Damle, Senior Counsel i/b. J.M. Joshi, Advocate for
the Petitioners.

Mr. Shivraj R. Patil, Advocate for the Respondent.

....

CORAM : R. G. KETKAR, J.

DATE : 25th FEBRUARY, 2016

P.C.

1. Heard Mr. Atul Damle, learned Senior Counsel for the
petitioners and Mr. Shivraj Patil, learned Counsel for the
respondent, at length.

2. By this Petition under Article 227 of the Constitution of
India, the petitioners have challenged the judgment and order
dated 12.6.2015 passed by learned Civil Judge, Junior Division,
Wada below Exh.5 in R.C.S. No.29/2015 as also the judgment
and order dated 16.10.2015 passed by learned District Judge-12,

Thane in Misc. Civil Appeal No.127/2015. By these orders, the Courts below allowed the application at Exh.5 made by the respondent, hereinafter referred to as the 'plaintiff' and issued injunction restraining the petitioners, hereinafter referred to as 'defendants' from causing obstruction and interference in possession of the plaintiff over 88 Ares out of Gat No.302 in all admeasuring 2 Hectare and 63 Are situate at village Ambiste Khurd Taluka-Wada, District-Palghar (for short, 'suit property').

3. The plaintiff instituted the suit for perpetual injunction restraining the defendants from causing obstruction to the ownership rights of the plaintiff as also causing obstruction to their peaceful possession over the suit property. The plaintiff *inter alia* contended that in the year 1967 survey No.302 was donated by (1) Ms. Anusaya Shantaram Sawant in the memory of her son Krishnaji Shantaram Sawant (since deceased), (2) Pandurang Bapuji Sawant and (3) Dharmaji Gopal Sawant and Shivram Gopal Sawant in the memory of Gopal Mukund Sawant (since deceased). Since then, the plaintiff is in possession of the entire gat No.302. In some portion, the plaintiff has carried out construction of building and rest of the open space is used as a

play-ground. In 7/12 extract entries are recorded to the effect that 88 Ares land is used as for 'Shala Gruha' and 'Gavat' . The plaintiff is using the suit property for fulfilling the objects of the Trust. Defendant Nos.1 to 5 intended to carry out construction on the suit property as also tried to obstruct the plaintiff's possession and tried to take possession of the bore-well. The plaintiff therefore instituted the suit for perpetual injunction.

4. During pendency of the suit, the plaintiff took out application Exhibit-5 for temporary injunction. Defendant resisted the application *inter alia* contending that the suit property is owned by them and not by the plaintiff. They are in possession of the suit property and consequently the plaintiff is not entitled to temporary injunction. The Courts below allowed the application. It is against these orders, the defendants have instituted the present petition.

5. Mr. Damle strenuously contended that in 7/12 extracts names of the defendants are shown as owners. Though the plaintiff contended that the suit property was donated, it has not produced the gift deed. Till date, the property taxes in respect of the suit property are paid by the defendants. The plaintiff has

not produced the affidavits of the villagers to substantiate its possession. 7/12 extract records 'grass' and not 'play ground'. In other words, the case of the plaintiff that the suit property is used as play-ground is not borne out from 7/12 extract. 7/12 extracts are only for fiscal purpose and does not determine the ownership rights. He further submitted that the Courts below did not record any positive finding to the effect that the plaintiff is in possession of the suit property. He, therefore, submitted that the impugned orders deserve to be set aside.

6. On the other hand Mr. Patil supported the impugned orders. He submitted that the Courts below after considering the material on record have concurrently held that the plaintiff is in possession. He also relied upon the decision of this Court in the case of ***Shamrao Ganpat Chintamani v. Kakasaheb Laxman Gorde, 2008(2) ALL MR 118*** and in particular paras-9 and 11 thereof.

7. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. The short question involved in the present petition is whether the plaintiff has established its

possession over the suit property. In paras-5 and 6, the learned trial Judge has categorically recorded a finding that 7/12 extracts of Gat No.302 showed that in the column of possession entry is recorded as 'Shalagruh' which goes to show that the plaintiff an educational institution is in possession. As against this, the defendants did not file any documentary evidence to show that they are in actual possession. The appellate Court in paras-14 and 21 has held that the plaintiff is in possession of the suit property. In para-23, learned District Judge has recorded that the defendants have started claiming ownership and possession over the suit property only in 2015. In other words, they did not take any action for more than forty five years against the plaintiff in respect of the suit property. The learned District Judge observed that the plaintiff is an educational institute and using the suit property for that purpose. Thus, the Courts below after considering the material on record have held that the plaintiff has made out a *prima facie* case, balance of convenience lies in favour of the plaintiff and that irreparable loss would be caused not only to the plaintiff but to the beneficiary of the school i.e. students. On other hand, if the application is allowed and ultimately the defendant succeed in

establishing their case, they can easily claim damages from the plaintiff. In other words the defendants can be compensated in terms of money. Considering these aspects, I do not find that the Courts below have committed any error in the case.

8. 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'.”

9. If the tests laid down in the decision of Wander Limited (supra) are applied to the facts of the present case, it has to be held that the Courts below were justified in exercising their discretion. In view thereof, I do not find that the Courts below have committed any error in passing the impugned orders. Hence, the petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Deshmane (PS)