

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1166 OF 2016**

Mr. Mohammad Sajanbhai Inamdar	Petitioner
Vs	
1. Late Mr. Adam Lalbhai Mulani, through legal heirs: A) Mr Jabbar Adam Mulani and Ors.	.. Respondents

Mr. N.R.Bubna a/w Mr. S. Joshi, Advocate for Petitioner.

CORAM : R.G.KETKAR,J.
DATE : 28/03/2016

PC:

1. Heard Mr. N.R.Bubna, learned counsel for the petitioner at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 21.5.2015 passed by the learned Jt. Civil Judge, Jr. Dn., Ghodnadi, (Shirur), below Exhibit-5 in Regular civil Suit No. 98 of 2015 as also the Judgment and order dated 4.12.2015 passed by the learned District Judge-12, Pune in Misc. Civil Appeal No. 186 of 2015. By these orders, the Courts below rejected the application made by the petitioners, hereinafter referred to as 'plaintiff', restraining defendants no. 6 and 7 from creating third party interest in any manner whatsoever.
3. The plaintiff instituted suit, inter alia, contending that the properties, more particularly described in paragraph 1 of the plaint, belonged to one Kondabhai Usman Mulani. Kondabhai

Mulani had three sons, viz., (1) Lalubhai, (2) Sajanbhai, (3) Dagdubhai. Dagdubhai is not heard by any one for more than 7 years. The plaintiff is from the branch of Sajanbhai. Defendants no. 1 to 5 are from the branch of Lalubhai. The plaintiff has prayed for partition and separate possession of their 1/4th share as also for declaration that the sale deed executed by defendants no. 1 to 5 in favour of defendants no. 6 and 7 is not binding on their share. The plaintiff has sought perpetual injunction restraining the defendants from creating third party interest .

4. During the pendency of the suit, the plaintiff took out application Exhibit-5 praying for temporary injunction restraining defendants no. 6 and 7 from creating third party interest. By the impugned orders, the Courts below have rejected that application. It is against these orders, the plaintiff has instituted present petition.

5. Mr.Bubna strenuously contended that on 25.10.1940, names of Lalubhai, Sajanbhai and Dagdubhai were recorded in view of death of Kondabhai some time in the year 1935. Lalubhai's name was recorded as manager of the joint family. He submitted that the very fact that the name of Lalubhai was recorded as manager of joint family, prima facie, shows that it was a joint family properties and was not exclusive properties of Lalubhai and consequently of defendants no. 1 to 5. He submitted that the courts below gave undue importance to

mutation entry no. 897 which was certified on 12.3.1964 recording names of legal representatives of Lalubhai who died on 3.2.1958. By that mutation entry, rights of the plaintiff in the suit properties are not extinguished. Mutation entry is made only for fiscal purpose for recovery of land revenue and is not indicative of ownership rights. He submitted that no prejudice would be caused to defendants no. 6 and 7 if injunction is granted. However, irreparable loss and hardship will be caused to the plaintiff if injunction is refused. It will also lead to multiplicity of proceedings.

6. I have considered the submissions advanced by Mr. Bubna. I have also perused the material on record. As far as the trial Court is concerned, in paragraph 8 the learned trial Judge has noted that after the death of Lalubhai some time in 1935 mutation entry no.897 was made in pursuance of application dated 26.1.1964. In pursuance thereof, mutation entry no.897 was certified on 12.3.1964 recording that Lalubhai died on 3.2.1958 leaving behind two sons and four daughters. The learned trial Judge observed that though the mutation entry was certified in the year 1964, till date the petitioner has not challenged the said entry. The said entry is there for more than 50 years.

7. As far as appellate court is concerned, in paragraph 24, the learned District Judge noted that defendants no. 6 and 7

purchased the suit properties from defendants no. 1 to 5 by registered sale deed. Their names are mutated in the record of rights. Even part of the suit properties was sold away by defendants no. 6 and 7 in favour of Sachin Bhondave. His name was also mutated in the record of rights. The plaintiff has not impleaded Sachin Bhondave in the suit.

8. In paragraph 25, the learned District Judge recorded that the plaintiff did not produce even a single document on record to demonstrate his right, interest and possession over the suit properties and consequently is not entitled to claim equitable relief of injunction. In my opinion, the silence maintained by the plaintiff after the mutation entry was certified in 1964 is eloquent. Prima facie, in view of Section 157 of the Maharashtra Revenue Code, 1966 the said entry has presumptive value. Both the courts after considering the material on record have declined to grant any relief.

9. In the case of *Wander Limited and another Vs. Antox India Private Limited, 1990 (Supp.) SCC 727*, Apex Court in paragraph 14 has laid down the following principles:

“14., 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."

In the light of the tests laid down by the Apex Court in the aforesaid decision and after considering the material on record, I do not find that the Courts below committed any error in passing the impugned orders. I also do not find that the Courts below exercised the discretion arbitrarily or perversely and have ignored the settled principles of law relating to grant or refusal of interlocutory injunction. In view thereof, Petition fails and the same is dismissed.

10. Liberty is reserved to the plaintiff to apply for expeditious disposal of the suit. If such request is made, the learned trial Judge will pass appropriate order thereon. Order accordingly.

(R.G.KETKAR, J.)