

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 1034 OF 2016

SMT. LATA MANOHAR KARALE
AND ORS

...Petitioners

Versus

SHRI GANPAT MALLU KUMBHAR
(DECD) THROUGH LRS. AND ORS

...Respondents

....
Mr. Pramod J. Pawar, Advocate for the Petitioners.

....

CORAM : R. G. KETKAR, J.

DATE : 23rd FEBRUARY, 2016

P.C.

1. Heard Mr.Pramod Pawar, learned Counsel for the petitioners, at length.

2. By this petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as the 'defendants', have challenged the judgment and order dated 7.9.2015 passed by learned Adhoc District Judge-1 Kolhapur in Misc. Civil Appeal No.153/2015. By that order, learned District Judge allowed the appeal preferred by the respondents, hereinafter referred to as the 'plaintiffs', and allowed application

Exh.5 made by them and issued injunction restraining the defendants from disturbing or obstructing possession of the plaintiffs over the suit property till hearing and decision of the suit.

3. The plaintiffs instituted suit for perpetual injunction restraining defendants from causing obstruction to their peaceful possession as also restraining the defendants from creating third party interest. Mr. Pawar invited my attention to averments made in para-4 of the plaint and submitted that there is no cause of action to institute the suit. The plaintiffs have not alleged any threats on the part of the defendants. In short, he submitted that there was no occasion for the plaintiffs to institute the suit for perpetual injunction. He further submitted that the plaintiffs have not denied the ownership of the defendants. Learned District Judge, therefore, was not justified in allowing the appeal when the learned trial Judge rejected the application of the plaintiffs.

4. I have considered the submissions advanced by learned Counsel for the petitioner. I have also perused the material on record.

5. Perusal of the trial Court's order shows that in para-5, learned trial Judge held that the plaintiffs have made out *prima facie* case as 7/12 extracts of the suit property reflect the names of the plaintiffs and their predecessors in title. The plaintiffs also produced the revenue receipts showing payments by them with respect of the suit property. In para-6, learned trial Judge observed that on the basis of 7/12 extracts and the revenue receipts, the balance of convenience lies in favour of the plaintiffs. However, in para-8 learned trial Judge did not discuss whether the plaintiff has made out case for issuing injunction restraining the defendants from causing obstruction to their possession or not. In para-8, learned trial Judge observed thus :

“8. The plaintiffs have mentioned in the plaint that they are agriculturists and have no any source of income apart from the suit property. However the defendants have filed 7X12 extracts of lands in gat no.56, 57 and 71 which show the names of the plaintiffs as owners and possessors. No any details as to how the defendants are creating third party interests is mentioned. Hence no irreparable loss will be caused to the plaintiffs if temporary injunction is not granted in their favour.”

6. Perusal of above paragraph clearly shows that the

learned trial Judge has not at all discussed the question whether the plaintiffs have made out a case for issuing injunction restraining the defendants from causing obstruction to their possession though the plaintiffs are found in possession. Learned trial Judge rejected the application on 18.6.2015. Aggrieved by that decision, the plaintiff preferred appeal. In para-13, learned District Judge has considered the findings recorded in para-8 of the trial Court's order. Learned District Judge did not agree with the observations made and conclusions reached by the trial Court.

7. In my opinion, once the learned trial Judge held that the plaintiffs have made out a *prima facie* case and balance of convenience also lies in their favour, learned trial Judge should have addressed the issue as to whether irreparable loss would be caused to the plaintiffs in case the injunction is refused. Learned trial Judge did not discuss this aspect at all. Learned trial Judge also did not discuss as to whether the plaintiffs have made out a case for issuing injunction restraining the defendants from obstructing their possession. In short, the trial Court has not applied the principles regulating grant or refusal

of injunction. In view thereof, learned District Judge was justified in interfering with the discretion exercised by the learned trial Judge.

8. In the case of **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. 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 learned District Judge was justified in interfering with the discretion exercised by the trial Court as the trial Court has exercised the discretion arbitrarily or capriciously or perversely. The trial Court had also ignored the settled principles of law regulating grant or refusal of interlocutory injunction. The learned trial Judge had not exercised the discretion reasonably and in a judicial manner.

10. In view thereof, I do not find that the learned District Judge has committed any error in passing the impugned order. Hence, the petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Deshmane (PS)