

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.548 OF 2017

Ramchandra Shankar More ... Petitioner
Vs.
Sunita Jyotiba Jadhav and others ... Respondents

Mr. Surel S. Shah for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : JANUARY 30, 2017

P.C. :

Heard Mr. Shah, learned Counsel for petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'defendant', has challenged the judgment and order dated 09.02.2016 passed by the learned Joint Civil Judge, Junior Division, Mohol below exhibit-5 in Regular Civil Suit No.117 of 2014 as also the judgment and order dated 18.11.2016 passed by the learned District Judge-2, Solapur in Miscellaneous Civil Appeal No.46 of 2016. By these orders, the Courts below allowed the application made by the plaintiffs No.1 to 4 and issued injunction restraining defendant from obstructing plaintiffs' cultivating the suit property.

3. In support of this Petition, Mr. Shah submitted that on 07.05.2006, mother of respondents executed *Khandapatra* in favour of the defendant. She had handed over possession of the suit property to the defendant for cultivating the suit property on *batai* basis. He further submitted that plaintiffs filed reply dated 09.12.2013 in the proceedings before the Tenancy Court, Tahsildar, Mohol. In that, plaintiffs admitted that defendant has forcibly and unlawfully taken possession of the suit

property. He submitted that the Suit is instituted on 23.07.2014. In other words, plaintiffs admitted that on the date of filing of the Suit, they are not in possession. The Courts below were therefore, not justified in allowing the application.

4. I have considered the submissions advanced by Mr. Shah. I have also perused the material on record. The submissions based on Khandapatra dated 07.05.2006 as also reply dated 09.12.2013 given by plaintiffs to the proceedings before the Tenancy Court, Tahsildar, Mohol were considered by the Courts below. As far as the trial Court is concerned, in paragraph 10, the learned trial Judge noted that defendant claims to be in possession of the suit property for a period of 50 years. However, he did not produce any documentary evidence showing he was cultivating suit property on *batai* basis.

5. The learned trial Judge has also considered Khandapatra dated 07.05.2006. In paragraph 14, the learned trial Judge has considered the specimen signatures of deceased Kusum on an application for opening account in State Bank of Hyderabad and signature appearing on the Khandapatra and observed that the said signature on Khandapatra creates doubt about signatures of deceased Kusum on it. The learned trial Judge also referred to Section 34 of the Maharashtra Stamp Act as also Section 17 of the Registration Act, 1908 and observed that the said Khandapatra is not duly stamped as also registered. In view thereof, the said document cannot be relied upon.

6. In paragraph 22, the learned trial Judge referred to the 7 x 12 extracts. It was observed that 7 x 12 extracts show that suit property was cultivated by deceased Shivaji from 1996-1997 upto 2005-2006 and after his death, plaintiffs No.1 to 4 were cultivating from 2007 to 2013.

In paragraph 24, the learned trial Judge also noted defendant's contention that he had given Rs.50,000/- as a khand for 10 years to the deceased Kusum in presence of two witnesses and that Khandapatra was written by Suresh Shivaji Shinde. The learned trial Judge observed that defendant did not file affidavits of these persons in support of his contention.

7. As far as the District Court is concerned, the learned District Judge also dealt with the submissions based on Khandapatra as also reply to the tenancy proceedings. In paragraph 10, the learned District Judge observed plaintiffs ownership is not disputed. Defendant is disputing possession on the basis of lease dated deed allegedly executed by Kusum, mother of the plaintiffs. In paragraph 11, the learned District Judge referred to 7 x 12 extracts produced by the plaintiffs and that defendant did not produce any documentary evidence, more so when he claims to be in possession for 50 years.

8. In paragraph 12, the learned District Judge dealt with reply dated 09.12.2013. Mr. Shah submitted that he learned District Judge observed that there is some force in the contentions of the defendant that plaintiffs have admitted possession of the defendant over the suit land. The learned District Judge thereafter observed that the learned trial Judge has passed discretionary order and merely because on the basis of same material, other view is possible that itself is no ground for interfering with the discretionary order.

9. Mr. Shah relied upon the reply dated 09.12.2013 given by the plaintiffs in proceedings before Tahsildar, Mohol. I have perused the reply dated 09.12.2013 given by the plaintiffs. In paragraphs 1 to 6, plaintiffs have contended that Khandapatra is forged and fabricated

document. It does not bear signature of Kusum. The signature appearing on Khadapatra is also fabricated. In short, plaintiffs have denied execution of Khandapatra. That apart, prima facie, in view of Sections 106 and 107 of the Transfer of Property Act, 1882, the Khandapatra also cannot be relied. In paragraph 7, plaintiffs specifically contended that 7 x 12 extracts show that right from 1996, entry is made in 7 x 12 extracts to the effect 'Khudda', meaning thereby that the plaintiffs are cultivating the suit land. Plaintiffs asserted that they are actually cultivating the suit land. They have further contended that the land revenue is paid by them for the year 2013-2014. The statement made therein that defendant has unlawfully and forcefully taken possession has to be viewed in that context. If the reply is read as a whole, I do not find that the plaintiffs have admitted possession of the defendant over the suit property.

10. 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.”

11. 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.”

12. Applying the tests laid down in **Wander Limited** (*supra*) and **Surya Dev Rai** (*supra*), I do not find any case is made out for invocation of powers under Article 227 of the Constitution of India. It cannot be said that the Courts below exercised the discretion arbitrarily, capriciously or perversely. Hence, Petition fails and the same is dismissed. It is made clear that the observations made herein are prima

facie and tentative and are made only for the purpose of considering correctness of the impugned orders. The learned trial Judge will decide the Suit on the basis of evidence on record and on its own merits, in accordance with law, uninfluenced by the observations made herein. Order accordingly.

13. At this stage, Mr. Shah orally applies for extension of stay for a period of 6 weeks from today. As I have found that plaintiffs are in possession and upheld the orders passed by the Courts below, oral application for stay is rejected.

(R. G. KETKAR, J.)

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