

Mr. Pradeep S. Gole for Petitioners.
Mr. Manmath S. Athalye for Respondent.

CORAM : R. G. KETKAR, J.
DATE : JANUARY 11, 2017

Heard Mr. Gole, learned Counsel for petitioners and Mr. Athalye, learned Counsel for respondent at length.

3. In support of this Petition, Mr. Gole strenuously contended that the learned District Judge committed serious error in allowing the appeal filed by the plaintiff. He submitted that plaintiff claims title on the basis

of the agreement of sale dated 22.02.2012 purportedly executed by Sarjerao Sakharam Talekar, father of defendants. The said agreement is executed on stamp paper of Rs.100/-. It is not a registered instrument. Sarjerao agreed to sell the suit property to the plaintiff for a valuable consideration of Rs.7,50,000/-. He submitted that in view of Section 34 of the Maharashtra Stamp Act (for short 'Act') as the said instrument is not adequately stamped, the same cannot be admitted in evidence for any purpose, including the stage for grant of interim relief. He has taken me through the trial Court's discussion and in particular paragraphs 9 and 10 thereof. He has also relied upon Section 17(1-A) of the Registration Act, 1908 as also Section 53-A of the Transfer of Property Act, 1882 to contend that in view of the amendment of these provisions with effect from 24.09.2001, as the agreement of sale is an unregistered instrument, plaintiff cannot claim protection under Section 53-A of the Transfer of Property Act as also is not entitled to claim injunction for protecting his possession.

4. Mr. Gole further submitted that the learned trial Judge has observed in paragraph 12 that though plaintiff claims that he is carrying on business of fertilizers in the name and style of "Rameshwar Krishi Seva Kendra", he did not produce any document substantiating the said claim. On the contrary, defendants came with the specific case that their father late Sarjerao and Dharmaji Talekar were running business of fertilizers in the name and style of "Rameshwar Krishi Seva Kendra". Defendants have also produced on record licence along with list at exhibit 27 which shows the name of Dharmaji Ramchandra Talekar and the name of shop is "Rameshwar Krishi Seva Kendra, Wing". Thus, the learned trial Judge held that defendants are in possession of the suit property and not the plaintiff.

5. As against this, the learned District Judge committed error in interfering with the discretionary order passed by the learned trial Judge. It cannot be said that the discretion exercised by the learned trial Judge was either arbitrary, capricious or perverse. In support of his submissions that plaintiff is not entitled to injunction to protect his possession under Section 53-A of the Act, he relied upon the decision of the Madras High Court in the case of ***Krishnamoorthy Vs. Paramasiva***, **AIR 1981 Madras 310**.

6. On the other hand, Mr. Athalye supported the impugned order. He has taken me through the impugned order and submitted that the learned District Judge, apart from considering the agreement of sale, has dealt with various documents, which unfortunately were not dealt with the trial Court. Apart from that, he has invited my attention to paragraph 10 of the reply exhibit-17 filed by the defendants, opposing the application for injunction as also the affidavit dated 08.12.2015 made by Dharmaji Ramchandra Talekar. In that affidavit, Dharmaji specifically stated that plaintiff is in possession of the suit property and is carrying on business in the name and style of “Rameshwar Krishi Seva Kendra”. He submitted that the learned trial Judge however, did not consider this affidavit and the other documents.

7. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. Plaintiff has instituted Suit for specific performance of agreement dated 22.02.2012. It is not in dispute that the total consideration mentioned in that agreement is Rs.7,50,000/-. The said agreement is not a registered instrument and is on a stamp paper of Rs.100/-. In view of Section 34 of the Act, even if I exclude from consideration the said agreement, the question is whether plaintiff has

established his possession over the suit property on the basis of some other material. Perusal of the impugned order shows that apart from the agreement of sale, the learned District Judge has considered various circumstances, namely, (i) consent letter dated 29.02.2012, which bears signatures of the defendants besides the signature of Sarjerao; (ii) application dated 02.03.2012 made by Sarjerao to the Grampanchayat for mutating plaintiff's name in the Grampanchayat record on the basis of plaintiff's possession over the suit property; (iii) payment of Grampanchayat taxes by the plaintiff on 18.01.2013, 30.08.2013 and 20.02.2015; (iv) filing of FIR dated 25.12.2014 by plaintiff at Khandala Police Station and Panchanama dated 27.12.2014 drawn by the police to the effect that the fire broke out at the shop of the plaintiff at Shirval; (v) defendants raising for the first time objection on 31.08.2015 for deleting name of the plaintiff from the Grampanchayat record. As against this, the learned trial Judge did not deal with these documents as also affidavit made by Dharmaji Ramchandra Talekar on 08.12.2015, which is on the record of the trial Court.

8. Mr. Gole further submitted that the case of the defendants is that the signatures on the consent letter dated 29.02.2012 are the forged signatures and that their and Sarjerao's signatures were obtained by the plaintiff by exercising fraud. These contentions cannot be considered at the interlocutory stage. The learned District Judge, after considering the material on record, has held that plaintiff has established his possession on the date of institution of the Suit. I do not find that the learned District Judge has committed any error in that regard. The learned District Judge was fully justified in interfering with the order passed by the learned trial Judge as the learned trial Judge did not consider the relevant material on record and rather ignored the material on record.

9. 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.”

10. As the learned trial Judge has exercised his discretion arbitrarily, capriciously and perversely, the learned District Judge was justified in interfering with the discretionary order. In view thereof, reliance placed by Mr. Gole on the decision of the Madras High Court in ***Krishnamoorthy (supra)*** does not advance case of the defendants. Hence, Petition fails and the same is dismissed. Needless to observe that the learned trial Judge will decide the Suit on its own merits and on the basis of the evidence on record and in accordance with law and uninfluenced by the observations made in this order. Order accordingly.

(R. G. KETKAR, J.)