

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.11743 OF 2016

Smt. Sundarabai Shankar
Vanjare and Ors

..Petitioners.

Vs

Shri Ashok Nathu Vanjare and
Ors.

.. Respondents

Mr.A.Y.Sakhare, Senior Advocate, with Mr.R.R.Shinde, Advocate for
Petitioners.

Mr. P.S.Dani, Senior Advocate, a/w Chirag Dave, Ms Anuja Desai
i/b M/s Legasis Parnters, Advocates for Respondent No.11.

CORAM : R.G.KETKAR,J.
DATE : 09/02/2017

PC:

1. Heard Mr.A.Y.Sakhare, learned senior counsel for the
petitioners and Mr.P.S.Dani, learned senior counsel for the
respondents at length.

2. By this Petition under Article 227 of the Constitution of
India, the petitioners, hereinafter referred to as 'plaintiffs', have
challenged the Judgments and orders dated 11.2.2015 passed
by the learned Jt. Civil Judge, Senior Division, Pune below Exhibit
-5 and Exhibit-69 in Special Civil Suit No. 678 of 2014 as also the
Judgment and order dated 9.8.2016 passed by the learned Adhoc
District Judge-2, Pune in Misc. Civil Appeal No. 155 of 2015. By
order dated 11.2.2015, the learned trial Judge partly allowed
application Exhibit-5 filed by the plaintiffs and issued injunction

restraining the defendants from evicting the plaintiffs from blocks no. 2,21,23 and 28,i.e. properties described in paragraphs 1A,1B, 1C and 1E of the suit or creating third party interest over these properties. The learned trial Judge declined to issue injunction in respect of Block no.167 described in paragraph 1D of the plaint. By order dated 11.2.2015 below Exhibit-69, the learned trial Judge allowed the application filed by respondent no.1, hereinafter referred to as defendant no.12, and issued injunction restraining the plaintiffs from entering, obstructing defendant no.12's possession in any manner, enjoyment and ownership over block no. 167. Aggrieved by these orders, the plaintiffs preferred Misc. Civil Appeal which was dismissed by the learned District Judge. The controversy in this petition is only in respect of block no. 167.

3. Plaintiffs have instituted suit on 30.4.2014, inter-alia, for declaration that plaintiffs no. 1 to 14 are having 1/3rd share in the suit properties; for partition and separate possession of their 1/3rd share; for declaration that the sale deed dated 1.6.2009 executed by defendants no.1 and 2 in favour of defendant no.12 in respect of block no. 167 is not binding on their 1/3rd share; for perpetual injunction restraining the defendants from obstructing their possession as also from creating third party interest. It is the case of the plaintiffs that the suit properties were original owned by Tukaram Babya Mahar alias Vanjari. He had two sons,

Limba and Dhondiba. Plaintiffs are from the branch of Dhondiba whereas defendants, excepting defendant no.12, are from the branch of Limba. The plaintiffs contended that on 1.6.2009, defendants no.1 and 2 executed sale deed in favour of defendant no.12. During pendency of the suit, the plaintiffs took out application for injunction at Exh.5 restraining the defendants from causing obstruction to their possession as also creating third party interest. Defendant no.12 filed written statement and set up counter claim as also say to the injunction application on 15.11.2014. Defendant no.12 also took out application Exh.69 for injunction restraining the plaintiffs from causing obstruction to his peaceful possession, enjoyment, ownership over the suit property, i.e. block no.167. The learned trial Judge partly allowed the application Exh.5 and allowed application Exh.69 filed by defendant no.12. The learned District Judge has dismissed the Appeal.

4. Mr.Sakhare submitted that defendant no.1 Ashok Nathu Vanjare along with his brother instituted suit against defendant no.12, who was defendant no.1 and defendant no.2 Savleram, since deceased, challenging the sale deed dated 1.6.2009 executed by defendant no.2 in favour of defendant no.1 on the strength of the plaintiffs power of attorney dated 25.9.1998. Mr. Sakhare has taken me through the averments made in the suit and in particular paragraphs 2 to 5. He submitted that in

paragraph 3, the plaintiffs therein asserted that Gat no.167 was owned by Limbaji Mahar, since deceased. He was manager of the joint family. After his death, name of Nathu Limbaji Mahar was recorded as manager of the joint family. In block no.167, deceased Limbaji and Dhondiba had $\frac{1}{2}$ share each. In paragraph 5, it was asserted that Limbaji's brother Dhondiba died leaving behind Shankar Dhondiba, Shivram Dhondiba, Sitaram Dhondiba, Dashrath Dhondiba. Their names were recorded as heirs in respect of undivided $\frac{1}{2}$ share in block no.167. Mr. Sakhare submitted that the parties in that suit entered into compromise on 10.9.2014 and the suit was disposed of on 11.9.2014 in terms of the compromise terms. Mr Sakhare submitted that these facts were not disclosed by defendant no.12 in Written Statement and Say to the application for injunction filed on 15.11.2014. He submitted that the plaintiffs in that suit clearly admitted half share of the branch of Dhondiba through whom the plaintiffs are claiming. These admissions are, therefore, binding on defendant no.12 who had compromised the suit on 11.9.2014. By not disclosing these relevant and material facts, defendant no.12 did not approach the Court with clean hands. The Courts below were, therefore, not justified in declining to issue injunction in favour of the plaintiffs and allowing the application Exh.69 filed by defendant no.12.

5. On the other hand, Mr. Dani supported the impugned

orders. He has invited my attention to paragraphs 17 to 20 of the District Court's order. In paragraph 17, the learned District Judge noted that the plaintiff Sundarabai has made application for recording the name of legal heir of the deceased Shivram on 24.2.2009 in respect of blocks no.29, 21, 23 and 168. In pursuance thereof, mutation entry no.879 was made. Sukhanand made application on 22.11.2005 for recording names of legal representatives in respect of blocks no.21, 23 and 28 and accordingly mutation entry no.741 was made. In other words, no applications were made in respect of block no.167. In paragraph 20, the learned District Judge noted that from the revenue record, it appears that defendant no.12 is in possession over the suit property. Suit property falls under Industrial Park. Mr. Dani has also invited my attention to mutation entry no.480 whereby name of Shivram in respect of block no.167 was deleted on 10.11.1993 on the ground that he is not in possession for more than 20 years and it was a hallow entry. Mr. Dani has also taken me through the order dated 15.12.2008 passed by Development Commissioner (Industries). He submitted that the Courts below have concurrently found that the plaintiffs are not in possession and, defendant no.12 is in possession of block no. 167 and, therefore, no case is made out for interfering with the impugned orders.

6. I have considered the rival submissions advanced by the

learned counsel appearing for the parties. I have also perused the material on record.

7. The short controversy is whether the plaintiffs have made out a case for issuing injunction in respect of block no.167. In so far as the trial Court is concerned, the learned trial Judge has considered this aspect in paragraphs 10 to 14. In paragraph 12, the learned trial Judge referred to the list at Exhibit 71 and observed that on 10.11.1993 name of Shivram was deleted. In paragraph 13, the learned trial Judge referred to order passed by the Collector.

8 As far as the orders below Exhibit-69 is concerned, the learned trial Judge also referred to same documents and observed that the plaintiffs have not established their case and that defendant no.12 has established the case in respect of block no.167. The learned trial Judge accordingly declined to issue injunction against defendant no.12. As far as the Appellate Court is concerned, in paragraph 17, the learned District Judge has referred to the applications made on behalf of the plaintiffs. The very fact that no application was made in respect of block no.167, prima facie, shows that the plaintiffs are not in possession of the suit property. In paragraph 20, the learned District Judge has referred to the revenue record which prima facie shows possession of defendant no.12. Thus, the Courts below after considering the material on record, have concurrently

found that the plaintiffs are not in possession and defendant no.12 is in possession of block no. 167. I do not find that the courts below have committed any error in exercising the discretion.

9. In the case of *Wander Limited Vs. Antox India Private Limited*, 1990 (Supp.) SCC 727, in paragraph 14, the Apex Court has observed thus,

“ 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. 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 the 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. In the case of *Surya Dev Rai Vs. Ram Chander Rai*, (2003) 6 SCC 675, the Apex Court, after exhaustively considering the scope of Petitions under Article 227 of the Constitution of India, have summarized the conclusions in paragraph 38. Conclusions 4, 5, 7 and 8 read thus,

“(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 above said 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.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.”

11. If the tests laid down in the above judgments are applied to

the facts of the present case, I do not find that the Courts below committed any error in exercising discretion while deciding the application for injunction. It cannot be said that the discretion exercised by the Courts below is arbitrary, capricious or perverse or that the Courts below ignored the settled principles of law regulating grant or refusal of interlocutory injunction. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed.

12. Needless to observe that the observations made herein are prima facie and tentative only for the purpose of finding out correctness of the impugned orders. The learned trial Judge will decide the suit on the basis of evidence on record and in accordance with law uninfluenced by the observations made in the impugned orders and in this order. Order accordingly.

(R.G.KETKAR, J.)