

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

**APPEAL FROM ORDER NO. 382 OF 2015
WITH
CIVIL APPLICATION NO. 494 OF 2015**

Sahara India Commercial Corporation Ltd. ... Appellant

Vs.

Smt. Kusum Bapusaheb Parande & Ors. ... Respondents

....

Mr. Rohit S. Gangawane for the Appellant.

Mr. Kuldeep U. Nikam for the Respondent Nos. 8, 9, 10 & 11.

...

CORAM : A.A. SAYED, J.

DATE : 23 MARCH 2017

P.C.:

1 The challenge in this Appeal is to the order dated 16 August 2014 passed by the Joint Civil Judge, Senior Division, Pune whereby, the Application (Exhibit 5) of the Appellant/Original Plaintiff came to be rejected.

2 The suit is filed by the Appellant essentially seeking specific performance of an Agreement dated 17 December 2004 in respect of the suit property. The Appellant is also seeking declaration in respect of the Agreement and Power of Attorney dated 9 January 1995 and Agreement dated 14 December 1996 and Deed of Confirmation dated 30 July 2004. The Application (Exhibit 5) seeks injunction against the Defendant Nos. 8 to 11 (Respondent Nos. 8 to 11 herein) restraining them from alienating the suit property and obstructing the Plaintiff's possession.

3 Prima facie, the suit would be barred by limitation. Even otherwise, except the Agreements, the Appellant has not been able to point out any document on record to show that he is in possession for the suit property.

4 The trial Court in paras 14, 18 & 19 has observed as follows:

“14. The original owners of the suit property i.e. defendant nos. 1 to 4 have sold to the defendant nos. 8 to 11 by sale deed dated 11.03.2011 (Exh. 3/11) for consideration of Rs. 52,00,000/- registered at Sub-Registrar Haveli at Sr. No. 2982. The para no. 8 of the plaint contends that as the defendant nos. 8 to 11 mutated their name and on that strength they are trying to obstruct but when and how is not pleaded. It is the further contention of the plaintiff in para no. 8 that the plaintiff also apprehends that on the basis of sale deed dated 11.03.2011 and mutation effected in their favour, the defendant nos. 8 to 11 may sell the suit property. They may also try to obstruct the plaintiff from use and enjoyment. There should be real apprehension. On the basis of vague contents about obstruction and creation of their party the temporary injunction cannot be granted. The plaintiffs are claiming to have entered into agreement and in possession of the suit property on the basis of the documents executed by the defendant no. 5 to the defendant nos. 6 and 7. The Power of Attorney of the defendant no. 5 came to end on the death of Bapusaheb Parade on 29.08.1995.

18. However in the present facts of the case the plaintiff has failed to prove his title. On the basis of title he is claiming possession. The original Agreement of Sale deed 09.01.1995

is not complete. The Agreement of Sale will not create title and/or right in the property. The sequence of transaction which came to end on the death of Bapusaheb Parande on 29.08.1995. The ratio of the above authorities is not applicable to the present facts of the case.

19. The plaintiff has not made out prima facie case. Original document dated 09.01.1995. There was time fixed but that is not pleaded. Almost 19-20 years have been lapsed Amrut Vithoba Mhaske is thereafter made various transactions on the basis of power of attorney and development of the suit property with defendant nos. 1 to 4. Some of the defendants were minors. Therefore I hold that balance of convenience is not in favour of the plaintiff. In case injunction is not granted, no irreparable loss will case to the plaintiff. Accordingly answering Point Nos. 1 to 4 pass following order:

ORDER

1. The application is rejected.
2. No order as to cost".

5 In the case of **Wander Ltd. And Another vs. Antox India P. Ltd. 1990 (Supp) Supreme Court Cases 727** it has been held by the Supreme Court in para 13 and 14 as under:

"13. On a consideration of the matter, we are afraid, the Appellate Bench fell into error on two important propositions. The first is a misdirection in regard to the very scope and nature of the appeals before it and the limitations on the powers of the Appellate Court to substitute its own discretion in an appeal preferred against a discretionary order. The second

pertains to the infirmities in the ratiocinations as to the quality of Antox's alleged user of the trademark on which the passing-off action is founded. We shall deal with these two separately.

14. *The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, 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 possibly 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. After referring to these principles Gajendragadkar, J. in *Printers (Mysore) Private Ltd. v. Pothan Josheph*:*

*"... These principles are well established, but as has been observed by Viscount Simon in **Charles Osenton & Co. v. Jhanaton** '... the law as to the reversal by a court of appeal*

of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in a individual case'."

The appellate judgment does not seem to defer to this principle."

6 The trial Court has decided the injunction Application (Exhibit 5) within the framework of law and the discretion exercised by the trial Court cannot be said to be arbitrary or perverse or against settled principles of law. The suit is of the year 2012 and may be ripe for hearing. In these circumstances, no case for interference with the impugned order is made out.

7 The Appeal from Order is dismissed. No order as to costs.

8 The Civil Application does not survive and same to stand disposed of.

(A.A. SAYED, J.)