

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

WRIT PETITION NO. 2121 OF 2017

Dyanu Mhadu Patil and anr. ... Petitioners
Vs.
Sonappa Padhurang Shisal and ors. ... Respondents

Mr.Umesh Mankapure for the Petitioners.
Mr.T.S.Ingale with Mr. Nikhil Pawar for Respondent No.1.

**CORAM : M.S.SONAK, J.
DATE : APRIL 20, 2018.**

P.C. :

1. Heard the learned counsel for the parties.
2. The challenge in this petition is to the orders dated 1st August 2016, and 27th December 2016, made by the learned Trial Judge and the learned Appeal Judge respectively granting relief of temporary injunction to the Respondent No.1 (original plaintiff in Special Civil Suit No. 272 of 2016).
3. Mr.Mankapure, the learned counsel for the Petitioners (original defendant Nos. 1 and 2 in Special Civil Suit No.272 of 2016) submits that the suit is instituted for partition and demarcation of shares in metes and bound. He submits that from

the bare perusal of the averment of the plaint, it is evident that the plaintiffs are themselves unsure of the precise share to which they are entitled or rather, which is the precise portion of the property, they have purchased by means of sale deed from the vendor from out the entire property. He submits that it is for these reasons that relief is sought by the plaintiffs for appointment of officers from the TILR to demarcate the property.

4. Mr.Mankapure submits that the Trial Court as well as Appellate Court have recorded findings that the property as on date is still undivided. He submits that it is a settled position in law that in partition suit there is no question of granting of any injunction, because, all parties, proceed in such a suit on the basis that they are co-owners and in joint possession of the property in question. For these reasons, Mr. Mankapure submits that both the courts have erred on principle and the ultimate grant of injunction is vitiated by perversity.

5. Mr. Mankapure refers to the sale deed dated 18th March 2016, on basis of which the plaintiffs claim ownership in respect of the suit property. He submits that even the sale deed speaks about purchase of undivided rights. In such circumstances, Mr.

Mankapure submits that the impugned orders by which an injunction has been granted are ex-facie illegal and deserve to be vacated.

6. Mr.Ingale, the learned counsel for the original plaintiffs submits that the suit is not only for partition, but also for perpetual injunction. He submits that the sale deed by which the original plaintiffs have purchased the property very specifically indicated the area of the purchased portion i.e. 38-R and also the boundaries of this portion have been specifically set out in the sale deed. Mr.Ingale points out that even the Petitioner herein has purchased the property from the original vendors and the sale deed on basis of which the petitioner has purchased the property is also, not significantly different. He submits that the sale deed makes reference to the specific area purchased by the petitioners and sets out the boundaries of such area. Mr. Ingale submits that since, there is no formal partition, suit has been filed so that there are no complications in future. He submits that there is absolutely no error in the impugned orders and therefore, this petition may be dismissed.

7. Rival contentions now fall for determination.

8. The scope of challenge to discretionary orders regarding grant or refusal of interim relief is restricted. In the case of **Wander Ltd. and anr. Vs. Antox India P. Ltd.**¹, Supreme Court, has observed as follows:-

“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.”

9. In the present case both the Trial Court as well as Appellate Court have concurrently favoured granting of interim relief. The two courts not only considered the documents on record, but also relied upon the Commissioner's report. No doubt the two courts have held that the property as on date is undivided. At the same time, the two courts have returned the prima facie findings that the parties are in occupation of separate shares, may be, for the sake of convenience. In such a situation, it cannot be said that the exercise of discretion is vitiated by any patent error of principle or unreasonability or perversity.

10. Though there may appears to be some ambiguities in the

1 1990 (Supp) Supreme Court Cases 727

documents by which both the petitioners as well as the Respondents have purchased the portions of the suit property, taking into consideration the circumstance that some boundaries are stated and also specific area is referred to, it cannot be said that the exercise of discretion by two courts concurrently is vitiated by any unreasonability or perversity so as to warrant interference.

11. No doubt all the observations in the impugned order are only prima facie and such observations need not be taken into consideration at the stage of deciding the suit finally on merits and on the basis of the evidence which the parties may ultimately present in the suit. However, there is no case as made out so as to warrant interference in the exercise of extra ordinary jurisdiction.

12. For all the aforesaid reasons, this petition is dismissed. There shall be no order as to costs.

(M.S.SONAK, J.)

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