

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

**APPEAL FROM ORDER NO. 321 OF 2018
WITH
CIVIL APPLICATION NO. 420 OF 2018
IN
APPEAL FROM ORDER NO. 321 OF 2018**

Khemani Distillery Private Limited .. Appellant
Vs.
Manu Babu Patel & Ors. .. Respondents

Mr. N.V. Walawalkar, Senior Advocate i/b Pirani & Co. for appellant.

Respondent Nos. 1 and 2 served.

Mr.Sanjay Dhadam, Advocate i/b Mr.Manoj S. Mhambrey, Advocate for respondent Nos.3 to 6.

**CORAM : A.S. CHANDURKAR, J.
DATE : 14TH DECEMBER 2018**

P.C.

1 This appeal has been preferred by the defendant No.6 in the suit filed by the respondent Nos.1 and 2 herein as the said defendant is aggrieved by the order passed by the trial Court dated 9th February 2018 thereby restraining said defendant from alienating, transferring or creating any third party rights in the suit property and also from changing its nature.

2 The facts in brief as per the plaint averments are that the plaintiffs claim to be the grandsons of one Gopal Chhagan. Their grandfather was in

actual cultivating possession of the suit agricultural land on the appointed day. It is claimed that the grandfather was declared as occupant by the Mamlatdar on 5th March 1982 and therefore, he and his wife were declared as occupants of the suit land. It is their further case that the defendant no.5, without having any right, title and interest, alienated the suit property in favour of defendant no.6. As further third party rights were sought to be created in the suit property, they filed a suit on 27th April 2015 seeking declaration that they were the owners and occupants of the suit lands and that the mutation entries in favour of defendant Nos.1 to 5 be declared as illegal and not binding on the plaintiffs. Further declaration was sought that the order passed by the Mamlatdar on 4th April 2007 in favour of defendant No.5 was illegal and that the Sale-Deed in favour of the defendant No.6 was also null and void. In that suit, the plaintiffs filed an application below Exh.57 praying that the defendants be restrained from creating the third party rights or alienating the suit property. The impugned order accordingly came to be passed on that application.

Shri N.V. Walawalkar, learned Senior Counsel for the appellant submitted that the trial Court was not justified in granting the interim relief as prayed for. According to him, the defendant No.6 had purchased the suit property about eight years before the filing of the suit, i.e., on 11th June 2007. Thereafter on 30th January 2008 and 22nd February 2008, the lands

were permitted to be converted for non-agricultural use. The defendant No.6 had started a distillery therein and considering the nature of its activities, there was no reason to restrain it from making any change or construction thereon. It was submitted that in fact the prayers as made in the suit were barred by limitation as the registered Sale-Deed in favour of the defendant No.6 was dated 11th June 2007. The other prayers as made were beyond the jurisdiction of the Civil Court in view of the bar as contained in the provisions of the Daman (Abolition of Proprietorship of Villages) Regulation, 1962 (for short 'the Regulations of 1962'). It was not open for the plaintiffs to challenge the adjudication made under those Regulations by filing suit in the Civil Court. In any event, it was submitted that the documents on record indicated that the defendant No.5 was declared as an occupier of the suit land under those Regulations which the defendant No.6 had purchased the same. It was thus submitted that the chances of success of the plaintiffs in the suit were remote.

3 The record indicates that this Court had issued notice in the appeal and the original plaintiffs have been duly served. On 22nd October 2018, as original plaintiffs did not appear for contesting appeal, fresh notice was given to them with an intimation that the appeal would be heard finally at the stage of admission. That notice has been duly served. On 3rd December

2018, further opportunity was given to them. There is however no appearance on their behalf and hence, I have taken into consideration the submissions as made on behalf of the appellant as well as the respondent Nos.3 to 6 who support the case of the appellant.

4 *Prima-facie* the documents on record indicate that on the strength of the orders passed by the Revenue Authorities under the Regulation of 1962, rights were conferred on defendant no.5. That order of Mamlatdar is dated 4th April 2007 and the Sale-Deed executed by him in favour of defendant No.6 is dated 11th June 2007. On the basis of that title, the defendant No.6 has been permitted to change the nature of the land from agricultural use to industrial use. Those orders were passed in the year 2008. Since then the defendant No.6 is running a distillery on the suit property. One of the prayers as made in the suit is a declaration that the order passed by the Mamlatdar on 4th April 2007 in favour of Defendant No.5 is illegal. Besides the aspect of limitation, the question of jurisdiction of the Civil Court to entertain such challenge would also arise in the light of the provisions of Regulation 12-F of the Regulation of 1962. The claim as made by the plaintiffs as regards declaration of their right would require adjudication after the evidence is led. At this *prima-facie* stage, it is found that the plaintiffs have not been able to make out a case warranting an

order of injunction so as to restrain the title-holder from dealing with the suit property. The trial Court, without considering these aspects, merely proceeded on the basis that certain facts were not brought to the notice of the Mamlatdar while passing the order dated 4th April 2007 but in the process ignored the aspect of jurisdiction.

5 In the light of the aforesaid facts, I am satisfied that a *prima-facie* case by the plaintiffs has not been made out in the light of title having been transferred in favour of the defendant No.6. At the conclusion of the hearing, it was put to the learned Senior Counsel for the appellant as to whether the appellant intended to alienate the suit property. On instructions, it was stated that the appellant did not intend to alienate the suit property. The interests of the plaintiffs to that extent would therefore stand protected. However, the defendant No.6 cannot be restrained from making any change or construction in the suit property as the same would be at its own risk and consequences.

6 Accordingly for the reasons stated hereinabove, the following order is passed :-

ORDER

- (i) The order dated 9th February 2018 to the extent it restrains the defendant No.6 from making any change or

construction on the suit property is set aside. It is open for the appellant to undertake construction on the suit property in terms of the order dated 20th January 2008 and 22nd February 2008. However, any change or construction done will be subject to final outcome of the civil suit and the defendant No.6 will not claim any equity in that regard.

(ii) The defendant No.6 shall file an undertaking in this Court to the aforesaid extent within a period of two weeks from today. On filing said undertaking this order shall operate. The proceedings in the civil suit are expedited.

(iii) The Appeal from Order is disposed in aforesaid terms. Pending civil application is also disposed of.

(A.S. CHANDURKAR, J.)