

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 8475 OF 2014****Mangaon Panchcroshi Shikshan****Prasarak Mandal, Mangaon****..... Petitioner****VERSUS****Dinanath Sudhakar Mangaokar & Anr.****..... Respondents****ALONGWITH****CIVIL APPLICATION NO. 532 OF 2018****IN****CIVIL APPLICATION NO. 800 OF 2016****IN****WRIT PETITION NO. 8475 OF 2014****Dinanath Sudhakar Mangaokar & Anr.****..... Applicants****VERSUS****Mangaon Panchcroshi Shikshan****Prasarak Mandal, Mangaon****..... Opponents**

Mr.N.V.Walawalkar, Senior Advocate, a/w. Mr.Suresh M.Sabrad,
Mr.Vikram N.Walawalkar, Ms.Neha R.Parte for the Petitioner.

Mr. Deepak Gupte for the Respondent nos. 1 and 2.

CORAM : R.D. DHANUKA, J.**DATE : 6th SEPTEMBER, 2018****P.C.**

By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 4th August,2014 passed by the learned Principal District Judge, Sindhudurg-Oros thereby allowing Misc. Civil Appeal No.29 of 2011 filed by the respondent no.1 (original defendant no.1). The learned Principal

District Judge has set aside the order passed by the learned trial judge passed on 2nd May,2011 granting temporary injunction below Ex.5 in favour of the petitioner (original plaintiff).

2. Pursuant to the order passed by this court on 3rd September, 2014, the writ petition is heard finally.

3. The petitioner trust has filed this petition through its chairman. The suit land is described in paragraph (2) of the petition. It is the case of the petitioner that the predecessors of the respondents and other villagers have gifted their lands to the petitioner trust. A resolution was passed by the petitioner trust on 7th November, 1959 resolving that the land owners of land bearing survey no.251 and survey no.300 have been gifted to the petitioner trust. It is the case of the petitioner that since 7th November,1959, the petitioner trust is in possession of the suit property as well as other properties.

4. It is the case of the petitioner that on 1st April,2011, the respondent no.1 came in the suit property and started digging the suit property for the purpose of erecting pole thereon. The petitioner accordingly filed a suit (Regular Civil Suit No.58 of 2011) for perpetual injunction against the respondent. The petitioner filed an application (Ex.5) for seeking temporary injunction against the defendants. The said application (Ex.5) was opposed by the defendants by filing affidavit in reply.

5. On 2nd April, 2011, the learned Joint Civil Judge, Junior Division, Kudal granted *ad-interim* relief in favour of the petitioner directing the parties to maintain *status quo* in respect of the suit property. The said *ad-interim* order was confirmed by an order dated 2nd May, 2011 by allowing the said application Ex.5. The defendants, their agent, servant or representative were thereby temporarily restrained from causing obstruction to the peaceful possession and enjoyment of plaintiff over the suit property till decision of the suit.

6. Learned Principal District Judge, Sindhudurg however allowed the Miscellaneous Civil Appeal No. 29 of 2011 by an order and judgment dated 4th August, 2014 and has set aside the impugned order passed by the learned trial judge below Ex.5.

7. Mr. Walawalkar, senior counsel for the petitioner invited my attention to the various averments to the plaint and submits that after considering the pleadings and documents relied upon by both the parties, the learned trial judge has initially granted *ad-interim* relief and extended the said order from to time finally confirmed the said *ad-interim* order by an order dated 2nd May, 2011. He invited my attention to the observations made by the learned trial judge in the impugned order and also the observations made by the learned Principal District Judge in the impugned order dated 4th August, 2014.

8. It is submitted by the learned senior counsel that the appellate court has allowed the said appeal mainly on the ground that the suit filed by the chairman of the petitioner trust was not maintainable. He

submits that this finding of the learned appellate court is totally perverse and contrary to the principles of law laid down by this court in case of ***Shyamabai wd/o. Surajkaran Joshi and others vs. Madan Mohan Mandir Sanstha***, 2014(2) ***Mh.L.J.*** 547 and in particular paragraphs 23 to 27.

9. It is submitted by the learned senior counsel that the petitioner was all throughout in possession and thus the findings rendered by the learned trial judge after considering the pleadings and documents categorically holding that the petitioner was in possession of the suit property, the appellate court could not have taken a different view in view of the fact that the findings rendered by the learned trial judge were not perverse. He submits that the learned appellate court has reversed the findings in favour of the petitioner on the ground that in the 7/12 extracts in respect of the property in question, the name of the defendant no.1 was entered. He submits that the said entry in the 7/12 extract was rebuttable and was already rebutted by the petitioner by *prima facie* proving the possession of the petitioner in the suit property. The learned appellate court thus could not have reversed the *prima facie* finding of the trial court by relying upon the 7/12 extract simplicitor.

10. Learned senior counsel tendered copies of the photographs for perusal of this court which are filed pursuant to the *ad-interim* order passed by this court.

11. Learned senior counsel placed reliance on the judgment of this

court in case of ***Wander Ltd. and another vs. Antox India P.Ltd., 1990 (Supp) SCC 727*** in support of the submission that the findings rendered by the learned trial judge while allowing Ex.5 application could not have been set aside by the appeal court since the findings of the learned trial judge were not perverse.

12. In support of the submission that the chairman of the petitioner trust who had filed a suit was a trustee and a change report in respect of his appointment as trustee was pending, he was entitled to file a suit, the learned senior counsel placed reliance on the judgment of this court in case of ***Chembur Trombay Education Society and others vs. D.K.Marathe and others, 2002(3) Bom.C.R.161.***

13. Learned counsel for the respondent no.1 on the other hand submits that the chairman of the trust had no locus to file the said civil suit. The petitioner did not produce any record before the learned trial court to show that any such change report was filed by the petitioner before the learned charity commissioner thereby reporting the change appointing the chairman as one of the trustee of the petitioner trust.

14. It is submitted by the learned counsel that it was not the case of the petitioner that the respondent no.1 had encroached upon the land. The respondent no.1 was all throughout in possession of the property.

15. Learned counsel for the respondent no.1 invited my attention to some of the findings rendered by the appellate court and would submit that those findings are not perverse and cannot be interfered with by

this court in this petition filed under Article 227 of the Constitution of India.

16. It is submitted by the learned counsel that the petitioner did not produce any record to show that any alleged road existed. He submits that the respondent no.1 had relied upon the map drawn by TILR which did not indicate existence of any such road.

17. Insofar as the issue of locus raised by the respondent no.1 is concerned, it is not in dispute that the suit was filed by the trust however through the chairman of the trust. The learned trial judge has considered this issue and has rendered a finding after considering the minutes of the meeting and more particularly in paragraph (23) of the order passed by the learned trial judge and holding that the person who had filed a suit on behalf of the trust was holding the post of chairman since prior to 2004. The petitioner had also made these submissions before the appellate court. This submissions are recorded by the learned District Judge in paragraph (8) of the impugned order.

18. I am inclined to accept the submissions of Mr. Walawalkar, learned senior counsel for the petitioner that the chairman who had filed a suit on behalf of the petitioner trust was appointed as a trustee and a change report filed in that regard under section 22 of the Maharashtra Public Trust Act, 1950 was pending. This court in case of ***Chembur Trombay Education Society and others*** (supra) has held that when the change report is pending reporting the appointment of the trustee, he is allowed to act as a trustee till an adverse order is passed

in the change report by the authority under section 22 of the Maharashtra Public Trust Act. In my view, the said judgment squarely applies to the facts of this case. I am respectfully bound by the said judgment.

19. A perusal of the impugned order passed by the appellate court indicates that the learned trial judge has allowed the appeal on the ground that the suit was filed by one of the trustee and not on the ground that the chairman was not the trustee. Be that as it may, this issue is already concluded in view of the judgment of this court in case of ***Shyamabai wd/o. Surajkaran Joshi and others*** (supra) in which the learned Single Judge of this court has after adverting to a judgment of Full Bench of this Court has held that even a sole trustee can file a suit on behalf of the trust. In my view, the said judgment of this court in case of ***Shyamabai wd/o. Surajkaran Joshi and others*** (supra) would squarely applies to the facts of this case. I am respectfully bound by the said judgment. In my view the view taken by the learned Principal District Judge is contrary to the principles of law laid down by this court in case of ***Shyamabai wd/o. Surajkaran Joshi and others*** (supra).

20. Insofar as the submission of the learned counsel for the respondent no.1 that the respondent no.1 was in possession of the property and that there was no road is concerned, a perusal of the order passed by the learned trial judge indicates that the learned trial judge has considered several documents and has rendered a *prima facie* finding of fact that the petitioner has been in possession of the suit

property since last several years and had accordingly passed an order of injunction against the respondent no.1. A perusal of the order passed by the appellate court however indicates that the learned appellate court only relied upon 7/12 extract showing the name of the respondent no.1. The entry in the property record is presumptive. The petitioner has *prima facie* proved its possession of the suit property and thus the learned appellate court could not have reverse the finding of the learned trial judge rendered merely on the basis of the such 7/12 extract.

21. Supreme Court in case of ***Wander Ltd.***(supra) has held that the appeal court while deciding the appeal under Order 43 Rule 1 cannot set aside the *prima facie* finding rendered by the trial court while deciding an interim application under Order 39 Rule 1 unless the *prima facie* finding rendered by the trial court are perverse. In my view the finding rendered by the trial court were rendered after considering the pleadings and documents and thus being not perverse, the same could not have been reversed by the appellate court. On the contrary, the findings rendered by the appellate court are *ex facie* perverse and deserves to be set aside.

22. The petitioner was already granted *ad-interim* relief by the learned trial court on 2nd April, 2011 which was continued from time to time and was finally confirmed on 2nd May, 2011 by allowing the application below Ex.5. This court has granted *ad-interim* relief in favour of the petitioner as far back on 3rd September, 2014. This court had stayed the order passed by the appellate court on 4th August, 2014

which order is continued by this court by an order dated 3rd September,2014 and the same is in force.

23. The suit filed by the petitioner is of the year 2011. I am thus inclined to continue the interim protection granted by the trial court in favour of the petitioner till disposal of the suit. I, therefore, pass the following order :-

- (a) Impugned order dated 4th August,2014 passed by the learned Principal District Judge in Misc. Civil Appeal No.29 of 2011 is quashed and set aside.
- (b) Misc. Civil Appeal No.29 of 2011 filed by the respondent no.1 is dismissed.
- (c) Order passed by the learned trial judge passed on 2nd May,2011 is upheld.

24. Writ petition is allowed in the aforesaid terms. No order as to costs. The parties are directed to proceed with the trial of the suit. Hearing of the suit is expedited. None of the party shall seek any unnecessary adjournment before the learned trial court.

25. In view of the disposal of the writ petition, civil application does not survive and is accordingly dismissed.

[R.D. DHANUKA, J.]