

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7883 OF 2017

Bhagyashri Dhananjay Patil Petitioner
V/s.
Tanaji Rajaram Patil and Anr. Respondents.

Mr. Nikhil Wadikar I/b Mr. Nandu V. Pawar, Advocate for the Petitioner.
Mr. Shrikant D. Patil for respondent no.1.

CORAM : M. S. SONAK, J.

DATED : 3rd May, 2019.

ORAL JUDGMENT:

1. Heard Mr. Wadikar for the petitioners and Mr. Shrikant Patil for the respondent no.1.
2. Challenge in this petition is of the orders dated 8th July 2016 and 18th April 2017 made by the learned trial judge and the Appeal court concurrently granting injunction against the petitioner, restraining the petitioner from interfering with respondents possession in respect of the suit property pending the disposal of the suit.
3. Mr. Wadikar, learned counsel for the petitioner submits that the respondents have come out with mutually destructive pleas before the trial court in their plaint. On one hand a decree of specific performance is applied for and on the other hand an adverse title is sought to be set up in themselves. He further submits that the two courts have not even

recorded *prima facie* findings on the aspect as to whether the respondents are at all entitled for specific performance. He submits that on these grounds the two orders warrant interference. Mr. Wadiker also pointed out that suits for specific performance is clearly barred by Law of Limitation and since there is no possibility of such a suit succeeding, no interim injunction ought to have been granted in favour of petitioner.

4. Mr. Shrikant Patil, learned counsel for the respondents defends the impugned order on the basis of reasoning reflected therein. He submits that two courts have concurrently held that the respondents have made out *prima facie* case and there is absolutely no perversity in the record of such findings. He, therefore, submits that this petition may be dismissed.

5. In the present case, as noted earlier, the two courts concurrently held that the respondent is entitled for injunction to protect their possession. This is not a case where the respondent can be said to have raised mutually destructive positions. The record itself *prima facie* indicates that the respondents are in possession of the suit property. The record also *prima facie* indicates that there is an agreement in relation to the purchase of the suit property.

6. The two courts upon consideration of the material on record have recorded only *prima facie* findings and it cannot be said that there is perversity or unreasonableness in recording of such *prima facie* findings. Once, the factum of possession, though, on *prima facie* basis stands established, the balance of convenience certainly lies in restraining the petitioner from taking law in his hand and seeking to evict or otherwise

to interfere the possession of the respondents.

7. On the aspect on limitation as well, arguable issues are raised and therefore, this was not case where the respondents were required to be non suited at the threshold, on the issue of limitation. The issue of limitation, in the present case involves mixed questions of law and facts.

8. In a case of **Wander Ltd and Anr. Vs. Antox India P. Ltd, 1990 Supp (1) SCC 727**, the Hon'ble Supreme Court has held that the trial court will not interfere with the exercise or 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 the exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach the conclusion different from the one reached by the court below 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 out view may not justify interference with the trial court's exercise of discretion.

9. In the present case, both the trial court and appellate court have concurrently exercised discretion in the matter. No case has been made out to demonstrate that the exercise of discretion was arbitrar or capricious or perverse.

10. Therefore, applying the principles of **Wander Ltd. (Supra)**, there

is no case made out to interfere in impugned order.

11. This petition is accordingly dismissed. There shall be no order as to costs.

12. Further, it is clarified that the learned trial judge while disposing of the suit need not be influenced by any of the observations in the impugned orders or for that matter the present order. The suit have to be disposed of on its own merits and in accordance with law, taking into consideration the parties would lead the evidence before the learned trial judge.

13. The learned trial judge is directed to dispose of the suit as expeditiously as possible

14. All concerned to act on the basis of an authenticated copy of this order.

(M. S. SONAK, J.)