

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5120 OF 2019

Vithoba Kondiba Dhore and Ors. ...Petitioners
vs.
Gajarabai Kushaba Pinjan and Ors. ...Respondents

Mr. Kamlesh Mali, for the Petitioners
None for the Respondents

CORAM : M. S. SONAK, J.

DATE : APRIL 24, 2019

P.C.:

. Heard Mr. Mali, learned counsel for the Petitioners.

2. The challenge in this Petition is to the orders dated 17th November, 2018 and 2nd April, 2019 made by the learned trial Judge and the Appeal Court declining the interim relief to the Petitioners during the pendency of R.C.S. No. 185 of 2017 instituted by the Petitioners.

3. Mr. Mali, learned counsel for the Petitioners point out that the Defendants on the basis of Power of Attorney, which is got fraudulently executed from the father of the Petitioners who was an alcoholic addict, have purported to grab the suit property to themselves. He points out that there are several circumstances

which will established the fraud played by the Defendants upon the Petitioners in this matter. He submits that in such circumstances, the Petitioners deserve protection because if such protection is not granted, it is possible that the Defendants will interfered with the possession of the Petitioners, in the suit property. He submits that for these reasons the impugned order warrants interference.

4. The Appeal Court in the present case has made reference to public notice dated 28th February, 2018 issued by and on behalf of the Petitioners seeking to sold the suit property at the stage when their application for interim relief was pending before the trial Court. The factum of such public notice which at least *prima facie* indicates the intention of the Petitioners to sale the suit property, was never made known to the trial Court or the First Appeal Court. This factum was brought to the notice of the Court only by the Defendants. The Appeal Court quite correctly has treated such non- disclosure as a material suppression.

5. The Petitioners on one hand seeks to protect their alleged possession in the suit property which they claimed is being utilized

for the purpose agricultural and on the other hand seek to sold the suit property and create third party rights therein even during the pendency of application, seeking interim relief. This fact was never made known to the two Courts. Even though the relief for interim injunction is equitable relief. According to me, the aforesaid conduct of the Petitioners was sufficient to deny them the interim relief. Besides, the Courts have concurrently held that the Petitioners have failed to make out a *prima facie* case. At this stage considering the restricted parameters that the interference with the discretionary orders, it can be said that *prima facie* finding recorded by the two Courts are free from any perversity or unreasonableness. It is also not a case that the discretion can be exercised unreasonably by the two Courts.

6. Applying the principles laid down by the Hon'ble Supreme Court in the case of ***Wander Ltd. and Another V. Antox India P. Ltd. 1990 (Supp) Supreme Court Cases 727*** it can be said that no case has been made out to interfere in the impugned orders.

7. For the aforesaid reasons, this Petition is dismissed.

8. There shall be no order as to costs.
9. However, it is clarified that the main suit will have to be disposed of on its own merits and in accordance with law without being influenced by the observations made in the impugned order and for that matter in the present order.
10. All contentions of all the parties are left open.

(M. S. SONAK, J.)