

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

3 WRIT PETITION NO.5414 OF 2020

1. Sidramappa Anandrao Mule
Age : 61 years, Occ : Agri.,
R/o Borgaon (Tu), Tq. Tuljapur,
District. Osmanabad.
2. Gurushiddahappa Anandrao Mule
Age ; 59 years, Occ : Agri.,
R/o Borgaon (Tu), Tq. Tuljapur,
Dist. Osmanabad.
3. Baswantappa Sidramappa Mule
Age : 37 years, Occ : Agri.,
R/o Borgaon (Tu), Tq. Tuljapur,
Dist. Osmanabad.
4. Gourishankar Sidramappa Mule
Age : 33 years, Occ : Agri.,
R/o Borgaon (Tu), Tq. Tuljapur,
Dist. Osmanabad.

..PETITIONERS

-VERSUS-

Sachin Tukaram Kadam
Age : 36 years, Occ : Agri.,
R/o Jalkot, Tq. Tuljapur,
Dist. Osmanabad.

..RESPONDENT

...

Mr.A.V. Indrale Patil, Advocate for the
petitioners.

...
CORAM : V.L.ACHLIYA,J.
DATE : 14.08.2020

ORAL ORDER :

Being aggrieved by the order dated

4th July, 2020 passed by learned District Judge-1, Osmanabad in Misc. Civil Appeal No.19 of 2020 whereby confirmed the order dated 12th February, 2019 passed below Exhibit-5 in Regular Civil Suit No.414/2019 by learned 2nd Joint Civil Judge, Junior Division, Tuljapur, the petitioners-original defendants have preferred this Petition.

2. Heard learned counsel for the petitioners. Perused the impugned orders.

3. Learned counsel for the petitioners assailed the impugned order with contention that the trial Court has erred in granting temporary injunction in favour of the respondent-plaintiff. It is submitted that though the plaintiff has relied upon the registered sale deed executed in his favour in the year 2010 and prayed for injunction to protect the possession, the trial Court has

failed to consider that the sale deed is sham and bogus and nominal transaction. It is contended that the plaintiff indulges into illegal money lending business. The number of sale deeds got executed from the various persons in the name of plaintiff, his family members and relatives. It is submitted that the sale deed in question in favour of the plaintiff by defendants is part of such illegal transaction, which is hit by provisions of Money Lenders Act. The sale deed got executed by the plaintiff is neither legal nor valid. The possession of the suit land lies with the petitioners- defendants. Pursuant to the complaint lodged against the plaintiff that he is indulging into illegal money lending business and grabbing the lands of number of agriculturists, the inquiry was conducted by the Registrar. In an inquiry, it was revealed that more than 113 sale deeds got executed in the name of plaintiff and his

family members. The proceeding is pending before the Registrar of Money Lending. It is submitted that the trial Court erred in exercise of judicial discretion in favour of the plaintiff to protect his illegal possession. It is submitted that the appellate Court also erred in confirming the order passed by the trial Court.

4. On due consideration of submissions advanced, I am of view, no case is made out to entertain the Petition filed under Article 227 of the Constitution of India against the concurrent decisions rendered by the Courts below. Learned counsel has fairly conceded that the alleged report of inquiry conducted by the Registrar was not produced before the trial Court. There are concurrent findings on facts recorded by the Courts below in favour of the plaintiff. The challenge raised in the Petition make out no case to term the reasons

and findings as perverse in law. The trial Court has granted temporary injunction in favour of plaintiff on due appreciation of rival pleadings and the documents. It is an admitted position that registered sale deed in respect of the suit property was executed in the year 2010. Since after registration of the sale deed, the land in question mutated in the name of respondent-plaintiff. The sale deed discloses that the land in question was purchased from the defendants for valuable consideration of Rs.7,75,000/-. The alleged report of Registrar was not part of record of proceeding of the trial Court. So also no order has been passed by the Registrar to hold that the transaction in question hit by the provisions of Money Lenders Act. In that view, the trial Court fully justified to exercise judicial discretion in granting temporary injunction in favour of plaintiff. The order passed by the trial Court is

reasoned and suffers from no error of law as well as jurisdictional error. So also the reasons recorded cannot said to be perverse in law.

5. The contentions as raised before this Court also raised before appellate Court. The appellate Court has dealt with the same and observed as under :-

"9. Defendants have filed copies of many sale-deeds executed infavour of plaintiff by different people and contended that plaintiff and his father are indulged in illegal money lending transactions. For that defendants further referred some proceedings initiated by D.D.R. against the plaintiff. However, this is a very preliminary stage to jump upon the conclusion as such because recitals in the sale-deed are very clear. Nature of sale-deed as questioned by defendants has the basis of alleged oral agreement, which is solely a part of

evidence, cannot be pre judged.

10. Merely so many sale-deeds are executed in favour of plaintiff does not mean the instant one is Nominal, nor there is any presumption as such.

11. On the other hand, plaintiff's name in the revenue record is uninterrupted from April 1st, 2010 till date. There is no challenge to the same before revenue authority nor defendant No.4 had filed any suit against the plaintiff and defendants 1 to 3 claiming his alleged right. It cannot be ignored that plaintiff has been paying revenue assessment and Crop Insurance amounts regularly. Consent given by defendants 1 & 3 as per recitals in the sale-deed prima facie estop them to question the legality and propriety of the document. Unless the clog under Sec.92 of the Indian Evidence Act is removed, all such alleged facts contended in the written statement cannot be relied upon. It is necessary to note that when defendants are contending about hand loan and

money lending transaction behind the registered sale-deed, there is absolutely nothing as to what was the period of repayment ? When they repaid the whole amount Rs.7,75,000/ including the interest ? as contended by them and by which means ? Such vague contention cannot be relied upon by circumventing documents which are infavour of plaintiff.

12. It is vehemently argued by ld.advocate for defendants that D.D.R Solapur has initiated proceedings against the plaintiff and his father about their illegal money lending business. Pursuant his directions, Talathi has conducted panchanama in the disputed field and recorded possession of defendants in respect of suit land and this fact is ignored by the ld.court of first instance. I have carefully examined this argument. Basically Talathi is not an authority to determine who is in possession of the suit land whenever any dispute arises. At the most, he has to follow proceedings under Rule 7B read with

Rule 31 of Mah.Land Revenue Code and refer such controversy to the Tahsildar who has to conduct the inquiry as prescribed therein. Regarding the direction given by D.D.R Solapur and Sub Registrar Tuljapur, the nature of that inquiry and any finding given by Talathi cannot influence order of temporary injunction when it is an exclusive aspect within the jurisdiction of civil court to find out who is in possession and who is entitled for temporary injunction. Therefore, all such documentation has absolutely no bearing nor the same support the contention of defendants when their own theory is based on so many oral agreements against the recitals in the sale deed.

13. In the result, I hold that ld.court of first instance has rightly considered all material placed before him and passed order under appeal, which is supported by cogent reasons. Admittedly, defendants have not furnished complete paper book of the record which is necessary for this

Misc.Appeal. At the fag end of their argument, their ld.advocate strategically produced bunch of documents which is neither permissible under Order 43, nor there is anything to hold that this record is a part of record of the suit pending before the ld.court of first instance. Such abrupt strategical production to the surprise of plaintiff, cannot be relied upon. The bonafides behind the same are not clear but only to create confusion. Such attempt cannot be entertained. Yet those documents relating to Revenue Panchanama and finding about who is in possession, given by Talathi has no bearing. Hence the said application (Exh.21) deserves to be rejected.

14. The Hon'ble supreme Court in the case of Skyline EducationInstitute (pvt) Ltd.vs.S.L.Vaswani, (AIR 2010, Supreme Court page No.3221) held that :

"Once the Court of first instance exercises its discretion to grant or refuse to grant relief of temporary injunction and the said

exercise of discretion is based upon objective consideration of the material placed before the Court and is supported by cogent reasons, the appellate court will be loath to interfere simply because on a denovo consideration of the matter it is possible for the appellate court to form a different opinion on the issues of prima facie case, balance of convenience, irreparable injury and equity. Unless the appellate court comes to the conclusion that the discretion exercised by trial court in refusing to entertain the prayer for temporary injunction is vitiated by an error apparent or perversity and manifest injustice has been done, there will be no warrant for exercise of power."

6. The order passed by the Courts below neither suffers from error of law nor jurisdictional error committed by Courts below, so as to invoke jurisdiction of this

Court vested under Article 227 of the Constitution of India.

7. In the case of *Essen Deinki v. Rajiv Kumar* reported at [(2002) 8 SCC 400], the Hon'ble Apex Court has considered the scope of exercise of powers under Article 227 of the Constitution of India and held as under:-

"Exercise of jurisdiction under Article 227 of the Constitution is limited and restrictive in nature. It is so exercised in normal circumstances for want of jurisdiction, errors of law, perverse findings and gross violation of natural justice to name a few. It is merely a revisional jurisdiction and does not confer an unlimited authority or prerogative to correct all orders or even wrong decisions made within the limits of the jurisdiction of the courts below. The finding of fact being within the domain of the inferior tribunal, except where it is

a perverse recording thereof or not based on any material whatsoever resulting in manifest injustice, interference under the article is not called for.

It is clear that error must be that of law and patently on record committed by the inferior tribunal so as to warrant intervention. It ought not to act as a court of appeal."

8. In the case of *Waryam Singh & another v. Amarnath & another* reported at **AIR 1954 SC 215** the Apex Court has held that the powers of superintendence conferred by Article 227 are to be exercised sparingly and only in appropriate cases in order to keep the subordinate Courts within the bounds of their authority and not for correcting mere errors.

9. Similarly, in the case of *Mani Nariman Daruwala @ Bharucha (deceased) through L.Rs. & others v. Phiroz N. Bhatena &*

others reported at [(1991) 3 SCC 141], the Apex Court has observed as under:-

"18. Was the High Court justified in taking this view and in upsetting the finding recorded by the appellate bench ? While considering this question it has to be borne in mind that the High Court was exercising its jurisdiction under Article 227 of the Constitution of India. In the exercise of this jurisdiction the High Court can set aside or ignore the findings of fact of an inferior court or tribunal if there was no evidence to justify such a conclusion and if no reasonable person could possibly have come to the conclusion which the court or tribunal who has come or in other words it is a finding which was perverse in law. Except to the limited extent indicated above the High Court has no jurisdiction to interfere with the findings of fact. (see: *Chandavarkar Sita Ratna Rao v. Ashalata S. Guram* (1986) 4 SCC 447). Applying these tests we are unable to persuade

ourselves to hold that the findings recorded by the appellate bench suffer from such an infirmity so as to justify interference with the said finding under Article 227 of the Constitution."

10. Thus on due consideration of submissions advanced, I am of the view, the Petition filed is devoid of merit. The petitioners have failed to make out any case to call for interference in exercise of writ jurisdiction under Article 227 of the Constitution of India. The orders passed are reasoned and within the bounds of law. No error of law or jurisdictional error lies in the orders passed to interfere with the impugned orders. It is well settled that once the Court of first instance exercise its discretion to grant or refuse to grant relief of temporary injunction and such exercise is based upon material placed for consideration of such Court then the reasons and findings

recorded by the trial Court even cannot be interfered by the appellate Court unless the appellate Court comes to the conclusion that the discretion exercised by trial Court vitiated by error apparent or perversity causing injustice to such party.

11. As discussed, the powers vested with this Court under Article 227 of the Constitution of India are in the nature of revisional powers. In exercise of powers under Article 227 of the Constitution of India, this Court cannot act as a Court of appeal to examine the findings of facts recorded by Courts below. It is equally settled position in law that even if two views are possible and the view taken by the Courts below is a possible view in the facts and circumstances of the case, still this Court can not substitute its own findings to findings recorded by the trial Court. In

absence of perversity in the reasons and findings recorded by the Courts below, I am not inclined to entertain the Petition. Accordingly, the Petition is dismissed with no order as to costs.

12. It is clarified that this Court has not dealt with the merit of the case of the petitioners. The observations as made above are made for limited purpose to examine the case of the petitioners to entertain the Petition under Article 227 of the Constitution of India. None of the observations made to be treated as view expressed by this Court as to the merit of the case of the plaintiff as well as defendants.

[V.L.ACHLIYA]
JUDGE

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