

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.868 OF 2016**

1 Mr. Vishnu Anant Dessai
Son of late Anant R. Dessai,
80 years of age.

2 Mrs. Lalita Vishnu Dessai,
Wife of Vishnu Dessai,
71 years of age,
Both r/o. H.No.27/7,
Vaghshi Wada, Borim,
Ponda, Goa.

....Petitioners

Versus

1 Govind Vithal Sawant,
Son of late Vithal Sawant,
Major of age, married,
Businessman, r/o. H.No.102,
Surla, Sacorda,
Dharbandora, Goa.

2 Mr. Gopinath Vaman Prabhu
Sawkar, Son of late Vaman
Prabhu Sawkar, Major of
age, Doctor, r/o. H.No.(not
known), Borim, Ponda, Goa.
(since deceased represented
through LR's.)

2(a) Swapnil Satyajit Prabhu
Sawkar,
son of Satyajit Prabhu
Sawkar, Major of age,
student.

2(b) Smt. Vijaya Satyajit Sawkar,
Major of age, Both residents
of Tishem, Borim, Ponda,
Goa.

2(c) Sau. Leena Prassana Prabhu
Dessai, Major of age, D/o.

Gopinath Sawkar

- 2(d) Shri Prassana Venkatesh Prabhu Dessai (since deceased through legal representatives)
- 2(e) Prasad Prassana Prabhu Dessai, Major of age, Both residents of Paniwada, Borim, Ponda.
- 2(f) Sau. Sulbha Sandesh Prabhu Dessai, Major of age, D/o. Gopinath Prabhu Sawkar.
- 2(g) Shri Sandesh Prabhu Dessai, Major of age, Both residents of Tarvalem Shiroda, Ponda – Goa.

....Respondents

Shri A.D. Bhobe, Advocate for the Petitioners.

Shri J.E. Coeho Pereira, Senior Advocate with Shri Sagar Rivankar, Advocate for the Respondent No.1.

Shri S. Karpe, Advocate for the Respondent No.2.

Coram:- DAMA SESHADRI NAIDU, J.

Date:- 14th AUGUST 2020

JUDGMENT :

Introduction:

One person purchases property in 1975. He claims he has purchased whatever his vendor owned. Later, after many years, in 2014, the vendor sells an extent, supposed to be a part of his total property, to another person. Meantime, some collateral litigation also crops up between the first purchaser and the vendor. So the first purchaser sues both the vendor and the subsequent purchaser. He wants the second sale deed declared illegal and also seeks injunction.

2. Does the first purchaser deserve an interim protection? The trial Court says 'yes'; the appellate Court says 'no'. What should this Court say?

Facts:

3. The petitioners are the plaintiffs, and the respondents the defendants in RCS No. 18/2015/C, before the Civil Judge, Junior Division, C-Court, Ponda. The petitioners, in fact, sued the defendants for a declaration and a permanent injunction. They sued in March 2015.

4. The crux of the dispute, I may note, is that the second respondent owned certain immovable property. In April 1975, he sold the property to the petitioners, through a registered sale deed. The sale deed contained neither the survey numbers nor the total extent, but it described the property clearly—with boundaries. As to the absence of the survey numbers, the petitioners contend that in 1975 no survey numbers had been assigned to the properties or, at least, the survey number had not been notified. The petitioners assert that they purchased the entire extent the second respondent had owned; that is, the property that lies between the boundaries shown in the sale deed.

5. In the 1990s, when the Government acquired a part of the property, the acquisition proceedings reflected the name of the original owner, the second respondent. According to the petitioners, they did not have the revenue records mutated. But there existed a cordial relationship between them and their vendor. So, when the government compensated the second respondent, who no longer was the owner; he handed over the amount to the petitioners. Besides that, in February 1996, the second respondent gave an affidavit to the petitioners affirming that the property belonged to them.

6. But in 2007, the second respondent tried to create some tenancy over the property he had sold to the petitioners. So they filed

RCS No.3/2007 B before the Chief Judge, Junior Division, C-Court, Ponda. It is still pending.

7. In 2015, as the petitioners allege, the first respondent tried to trespass upon their property. Then, they came to know that the second respondent, on 1st December 2014, sold certain extent to the first respondent. It was on the premise that the second respondent had a larger extent at his disposal, and from that larger extent he could sell a part to the first respondent. Under these circumstances, the petitioners have sued the respondents—the original owner and the subsequent purchaser—seeking a declaration that the sale deed in the first respondent's favour was void and an interim injunction that the respondent should not disturb their possession, among other things.

Procedural History:

8. In RCS No. 18/2015/C, the petitioners applied for an *ad interim* injunction under Order 39, Rule 1 of CPC. They wanted the trial Court to restrain the first respondent from creating any third-party interest over the property and from interfering with their possession of the property. First, the trial Court granted an *ad interim* injunction. Later, in November 2015, it confirmed the interim injunction on the merits, after hearing both the parties. Pending the suit, the second respondent died and his legal representatives were brought on record. I have, however, continued my reference as if the second respondent were alive; it is to avoid narrative confusion.

9. Aggrieved, the respondents took the matter to the District Court in Miscellaneous Civil Appeal No.112/2015. The appellate Court, through its judgment dated 19 August 2018, allowed the appeal. That is, it set aside the *ad interim* injunction the trial Court had granted. Then, further aggrieved, the petitioners have filed this writ petition, invoking Article 227 of the Constitution of India.

Submissions:

10. Shri A.D. Bhobe, the learned counsel for the petitioners, has submitted that the trial Court's order granting injunction suffered from no legal infirmity. According to him, the appellate Court had no grounds to interfere with the judicial discretion exercised by the trial Court. As to the facts, Shri Bhobe has stressed that the petitioners purchased the entire property lying between the boundaries shown in the sale deed. And the identity of the property had never been in doubt. Taking advantage of the perceived ambiguity in the petitioners' sale deed, the second respondent, who ceased to have any interest in the property, first, tried to create third-party interest in the property in the name of tenancy. When he could not succeed, then in 2014 he created a sale deed in the first respondent's favour. It was as if there remained some more property with the second respondent after his selling the property to the petitioners in 1975.

11. Shri Bhobe has drawn my attention to a deed of rectification, dated 20 April 2015, the second respondent executed in the first respondent's favour. In this regard, he stresses that it is a *post litem motam* document—a document executed after the litigation had begun. As to the survey numbers, Shri Bhobe has taken pains to explain what compelled the petitioners to secure the sale deed without boundaries in 1975. At any rate, he persists with his plea that the second respondent sold his entire property and that the subsequently proclaimed survey numbers could not be decisive of the extent.

12. Shri Bhobe has also pointed out that the boundaries shown in the petitioners' sale deed and those in the first respondent's sale deed are identical. Nowhere has the second respondent whispered in the first respondent's sale deed that he had earlier sold a part of the property to the petitioners. To conclude, Shri Bhobe has submitted that the petitioners have not mutated the revenue records because of their

ignorance. But that factum would not defeat their substantive rights for mutation serves a different purpose altogether.

13. Shri Bhobe has urged this Court to set aside the impugned order and restore the trial Court's order.

Respondents:

First Respondent:

14. Shri Coelho Pereira, the learned Senior Counsel for the first respondent, has submitted that the trial Court granted the interim injunction through a very cryptic order. According to him, it has not considered the three cardinal principles that entail a suitor to an interim injunction. There was no discussion on that count. Shri Pereira has submitted that the boundaries in the petitioners' sale deed are vague and that the petitioners want to take advantage of that. He has also added that the affidavit the second respondent allegedly executed already stands denied.

15. Shri Pereira has also contended that by 1975 the lands in Goa had been surveyed and that all properties were assigned survey numbers. The 1975-sale deed, in fact, conveyed only "a piece of" the property the second respondent owned. According to him, Schedule II of the first respondent's sale deed delineates the property with specific survey numbers. So, there is no ambiguity on that count. Then, Shri Pereira has drawn my attention to the land acquisition, the compensation paid to the second respondent, and the mutation of revenue records in the second respondent's favour. All these facts, he stresses, unmistakably advance the respondents' case.

16. After referring to the pleadings in the present suit and also the petitioners' previous suit, Shri Pereira has submitted that the petitioners themselves have admitted about the property still left with the second respondent. Even the affidavit, according to him, deals only with a few survey numbers.

17. In the end, Shri Pereira has emphasised that the appellate Court has justly reversed the trial Court's order. It has, in other words, interfered with the trial Court's discretion because its order had been riddled with legal infirmities. On the technical front, Shri Pereira has submitted that under Article 227 of Constitution of India, this Court ought not to upset the appellate Court's well-considered findings. To support his contentions, he has referred to *Shalini Shyam Shetty v. Rajendra Shankar Patil*^[1] and *Shivchandrai Jhunjhunwala, Charitable Trust v. Govindprasad Ganeshprasad Dubey*^[2].

18. On instructions, the learned Senior Counsel has also submitted that the first respondent, pending the suit, will not alienate the property, nor would he create any third-party interest. Thus, Shri Pereira urges this Court to dismiss the writ petition.

The Second Respondent:

19. Shri S. Karpe, the learned counsel for the second respondent, has adopted the arguments Shri Pereira has advanced for the first respondent. Besides, he emphasised that the petitioners are trying to "grab the entire Property" because the 1975-sale deed contained no survey numbers. According to him, the second respondent's property 'Aagar Vakshi', also known as "Vagsh", is a vast property spreading across many survey numbers. He sold only a part of that vast land to the petitioners. And that piece of land sold to the petitioners falls in Survey No. 10/0, measuring 53,750 sq. mts. In other words, the petitioners have no right over the property covered by Survey Nos. 11/0, 13/0, 15/0 and 17/0. Shri S. Karpe has also justified the rectification deed the second respondent executed pending the suit.

20. As Shri Pereira did, Shri S. Karpe also pointed out that in the land acquisition proceedings, it is the second respondent that was

¹[(2010) 8 SCC 329]

²[2004 (2) BCR 441]

compensated, not the petitioners. And to conclude, he has stressed that the affidavit—its execution already denied—is no piece of evidence to be relied on.

Discussion:

21. It is an adjudication on an interlocutory order. The trial Court has exercised its discretion in one way and the appellate Court in another way. Then, which way this Court's pendulum should swing? To what extent can this Court interfere in an interlocutory adjudication, exercising its supervisory jurisdiction under Article 227 of the Constitution of India? Whichever way it does, the fact remains the ruling is based on mere *prima facie* appreciation of the material available on record. And it will not affect the suit outcome, which must depend on the trial and deeper appreciation of all the material already placed and yet to be placed on record. So I disclaim that no observation made in this disposition shall affect the merits of the matter pending at trial Court.

22. Before we appreciate the rival contentions, we had better set out what weighed with the trial Court and the appellate Court.

(a) The Trial Court's View:

23. The trial Court in its order on Exhibit 3, dated 20.11.2015, finds thus:

- (a) The second respondent's affidavit though speaks of Survey Nos.10/0, 13/0 and 17/06 of Borim, it also notes that the second respondent has undertaken "to deal separately" with the remaining part of the property sold to Shri Vishnu Anant Desai.
- (a) So, the second respondent did admit that he sold to the petitioners property not only covered by those three survey numbers but also beyond.

- (b) The description of “property sold is same as the entire property and hence there is no question of non-identification of the said property”.
- (c) Gathered from the pleadings and the documents, including the photographs, the allegations stand established that the respondents had been trying to interfere with the petitioners' possession.

(b) The Appellate Court's View:

The Appellate Court's Findings:

24. The Appellate Court in its judgment, dated 19.08.2016, framed these issues:

- (1) Has the second defendant sold to the first defend any piece of property that belongs to the plaintiffs? (No)
- (2) Has the plaintiff identified his suit property? (No)
- (3) Is the first defendant a *bona fide* purchaser? (Yes)
- (4a) Is the impugned order arbitrary and perverse? (Yes)
- (4b) Has the trial Court exercised its discretion judiciously? (No)

25. The reasons the District Court has supplied are these:

(a) The revenue records reflected the first and second respondents' names, but not the plaintiff's.

(a) The sale deed, dated 11.04.1975, refers to only a portion of the property bearing Survey No.10/0, and not the entire property.

(b) If one compares the boundaries of the property referred to in the sale deed, dated 11.04.1975, they clearly refer to a portion of the property bearing Survey No.10/0.

(c) Though “the survey was promulgated in the year 1973-74” the sale deed reflected no survey numbers.

(d) The plaintiffs “have not relied upon any title documents to show that the suit property belonged to have or that it forms part and parcel of that property”.

- (e) No conveyance could take place through an affidavit; nor can an affidavit be treated as a mode to transfer property.
- (f) The affidavit “is baseless and cannot be considered because the boundaries of these survey numbers taken together could not correlate to the boundaries shown by the plaintiffs in their Sale Deed of 1975”.
- (g) The boundaries in the 1975 Sale Deed and the boundaries in the 2014 Sale Deed are different.
- (h) The plaintiffs' case “is purely based on assumptions and conjunctures which do not have any factual corroboration”.
- (i) The plaintiffs “have not identified the suit property from the entire larger property. The plaintiffs are trying to take advantage by misusing the vague description of the property in their Deed of Sale”.
- (j) “The survey number of defendant no.1 is distinct survey number and the said property was never sold to the plaintiffs”.
- (k) The order passed by the trial Judge is arbitrary and perverse and that calls for judicial intervention at the appellate stage.

(c) This Court's View:

26. To begin with, I must note that the scope for judicial intervention in this writ petition—the one under Article 227 of the Constitution—remains restricted. The only issue I must consider is whether the appellate Court's interference with the trial Court's judicial discretion is warranted. For this purpose, I must, incidentally though, refer to a few facts and rule on them. I do so, attaching no finality to those findings.

27. The petitioners purchased the property from the second respondent. That purchase was in 1975. On the admitted facts, let us see whether the appellate Court has justified itself in interfering with the trial Court's *prima facie* findings and judicial discretion.

(a) Are the Appellate Court's Observations justified?

28. The appellate Court's observation on the mutation of revenue records needs no comment; the petitioners sought no mutation. It observes that the property referred to in the 1975-Sale Deed "is only in respect of portion of property bearing Survey No.10/0 and not the entire property". I wonder what materials prompted the appellate Court to observe thus. I see none. The 1975-sale deed contains no survey numbers, nor does it record that the second respondent sold only a portion of the property.

29. The appellate Court, then, notes that "if one compares boundaries of the property referred to in the Deed of Sale dated 11.04.1975, it is clear that it refers to portion of the property bearing Survey No.10/0". Again, this observation is with no basis. According to it, "the survey was promulgated" in 1973-74. It is incorrect. The survey seemed to have taken place then, not the promulgation; it was after 1975. The petitioners, according to the appellate Court, "have not relied upon any title documents to show that the suit property" belonged to them. Their suit revolves around that plea: all the property that lies between the boundaries belongs to them.

30. As to the affidavit, the appellate Court asserts that no conveyance could take place through an affidavit. Agreed. The petitioners only claim that the second respondent has admitted the petitioner's claim to the property. They have never pleaded that they have secured the property through that affidavit. And of all the appellate Court's observations, the strangest is that the "boundaries in the 1975 Sale Deed and the boundaries in the 2014 Sale Deed are different". As I have set out below, the boundaries are identical.

31. The plaintiffs are said to "have not identified the suit property from the entire larger property." The petitioners' very claim is that the entire property belonged to them. For the appellate Court, the

petitioners “are trying to take advantage by misusing the vague description of the property in their Deed of Sale.” Unfortunately, this observation is premature, if not anything else. The appellate Court has finally observed that the “survey number of defendant no.1 is distinct survey number and the said property was never sold to the plaintiffs.” The appellate Court, I am constrained to note, has virtually decided the entire case in one fell swoop. The appellate Court wants us to interpret the 1975-sale deed in the light of the 2014-sale deed. But the practice must be on the converse. We must understand the latter deed of conveyance in the light of the previous one.

(b) Boundaries Prevail Over the Extent and Survey Numbers:

32. As we have already noticed, the 1975-sale deed contained neither the survey numbers nor the extent; it describes the property with boundaries. And the boundaries are unambiguous. Why has the sale deed contained no survey numbers? According to the petitioners, by 1975, the properties in Goa had no survey numbers. The respondents contest this statement, but they too agree that by 1975 the survey numbers had not been notified.

33. What extent has the second respondent sold to the petitioners? There is no dispute about the identity of the property; the controversy concerns only the extent. On this score, the common law principles compel us to conclude that the boundaries prevail over extent—and even survey numbers.

34. In *Sheodhyan Singh v. Mst. Sanichara Kuer*^[3], the Supreme Court has accepted the respondents’ reference to *Thakur Barmha v. Jiban Ram Marwari*^[4] and *Gossain Das Kundu v. Mrityunjay Agnan Sardar*^[5]. In the context of those judgments, *Sheodhyan Singh* has held

3[] AIR 1963 SC 1879

4[] 41 Ind App 38 (PC)

5[] 18 Cal LJ 541

that if the property identity is certain but found mis-described, that could be treated as a mere irregularity. In other words, once the land was described both by definite boundaries and by measured area, if the extent of the area turned out to be incorrect, it must be treated as a case of misdescription of the area, and the boundaries should prevail.

35. In *Subhaga v. Shobha*^[6], the Supreme Court has held that a property, as is well established, can be identified either by boundary or by any other specific description. Even if there was any discrepancy, normally the boundaries should prevail. There was no occasion to spin a theory, according to *Subhaga*, that it was necessary to survey all the adjacent lands to find out whether an encroachment was made.

36. In *Subbaya Chakkaliyan v. M. Mutbiah Gounden*^[7], a Division Bench of the Madras High Court has held that "ordinarily when a piece of land is sold with definite boundaries, unless it is very clear from the circumstances surrounding the sale that a smaller extent than what is covered by the boundaries was intended to be sold, the rule of interpretation is that boundaries must prevail as against measurement." A similar view was expressed in *Palestine Kupat Am Bank Co-operative Society Ltd. v. Government of Palestine*^[8]: In construing a grant of land, a description by fixed boundaries is to be preferred to a conflicting description by area.

37. On this point, more comprehensive is the judicial view in *Kumaran Krishnan v. Ulahannan Mathai*^[9]. In that case, the Kerala High Court has held that the evidence supplied by boundaries, extent, survey numbers and lekhoms forms the determining factor when the identity of property is put in issue. If all these factors harmonise, there is little

6[] 2006 AIR SCW 4855

7[] AIR 1924 Mad 493

8[] AIR 1948 PC 207

9[] 1957 KLT 42

difficulty to identify the property in dispute. But when some of them conflict with the rest—for example, the extent and survey numbers conflict with the boundaries—"usually the boundaries predominate and the rest is regarded as erroneous or inaccurate description". That said, the Court cautions that this is not an inflexible rule and the guiding principle is to apply the test that is "most unlikely to be vitiated by error."

38. Finally, I may refer to *Temple of Maruti v. Balkrisna Suryaji S. Kakodkar*^[10]. Here the issue is, the boundaries and the area conflicting, which one should prevail? This Court, per N. J. Pandya, J., has ruled that the boundaries prevail.

39. As Kerala High Court has held in *Kumaran Krishnan*, it is not an inflexible rule. That said, this principle can safely apply at the inception as a *prima facie* proposition before the issue gets tested on the anvil of trial.

(c) What are the boundaries in the 1975-Sale Deed?

40. As the second respondent himself has pleaded, the entire property is known as 'Aagar Vakshi' or "Vagsh". Its location, too, is not disputed. The dispute is, as I have earlier noted, how much property did the second respondent sell to the petitioners in 1975? Nothing else. This property falls in these Survey Numbers: 10/0, 13/0, 15/0 and 17/0. The dispute relates to a part of the property the petitioners purchased, and that falls, as they plead, in Sy. No.17/0. Since the assigning of the survey numbers is a later development, we may ignore them for the time being. Let us compare the schedules in the 1975-sale deed and 2014-sale deed.

Schedule in the 1975-Sale Deed:

¹⁰[1] (1998) 3 Bom CR 540

All that the piece of land “known as Agar Vakshi”, situated at Borim, bounded on the

- East: by the top of hillock belonging to the Comunidade of Borim and the property belonging to one Crisna Vencetexa Sirodcar;
- West: by the top of hillock of the said Comunidade and the property Bainocal belonging to one Ambaji Sadassiva Sinai;
- South: by the top of hillock and the property belonging to one Pundalica Govinda Xete;
- North: by the top of hillock of the said property Bainocal of Ambaji Sadassiva Sinai.

The registration particulars: “The said piece of land is registered in the Land Registration Office under *No.354 of L B 1 new and in the Land Revenue Office under Nos. 621 to 639*, District Goa, Sub-District Ponda. The said piece of land lies within the area of Grampanchayat of Borim. (italics supplied)

Schedule I in the 2014-Sale Deed

All that landed property known as “Vagshi” admeasuring an area of 14,950.00 sq.mtrs. situated at Village Borim, bounded as under:

- East : By top of the Hill and property of Crisana Ventexa Sinai Shirodkar.
- West : By top of the Hill and property of Ambaji Sadasiva Sinai
- North : By top of the Hill and property of Ambaji
- South : By top of the Hill and property of Pundalik Govind Shet.

As to the registration particulars, it mentions as “not described in Land Registration Office but enrolled in *the matriz N.621-639* which is

surveyed under survey No.17/0 of village Borim of Ponda Taluka”. Barring the added survey number, nothing changes. (*italics supplied*)

41. Of course, the second respondent claims that he has sold a part of Schedule I to the first respondent; he calls it Schedule II. He says he has sold 13,400.00 out of 14,950.00 sq. mtrs. This Schedule II, in Survey No.17/0, is bounded on North: by property bearing survey No.9; South: by property bearing survey No.16; East: by property bearing survey No.10; and West: by property bearing survey No.18.

(d) What factors matter for an Ad Interim Injunction?

42. True, the title may be incidentally gone into, but that is not the decisive factor. Possession matters. This revision under Article 227 of the Constitution is no appeal in disguise. Accepted. So let me consider a singular issue: has the appellate Court been justified in upsetting the trial Court’s judicial discretion?

43. By 1975, the survey numbers had not been notified. Anyway, as the executant, the second respondent provided no survey numbers in the sale deed. He cannot complain on that count. And the first respondent, as a subsequent purchaser, cannot take a plea unavailable for the second respondent. The boundaries, as I have set out above, are identical in the 1975-sale deed and the 2014-sale deed. That the Schedule II in the 2014-sale deed is different avails nothing. This schedule is said to have carved out of Schedule I. If Schedule I in the 2014-sale deed and the sole Schedule in the 1975-sale deed match, Schedule II assumes no importance.

44. The 1975-sale deed does not say that the second respondent has larger extent and that he is selling a part of it. It has not whispered even in the schedule that on one side the owner’s property remains. Similarly, the 2014-sale deed does not refer to the property sold to the petitioners. They were nowhere shown, even, as the neighbouring owners. The 1975-sale deed records that the property known as “Aagar

Vakshi” was sold. This is also known as “Vagsh”. The second respondent accepts that. Yet, the second respondent sold to the first respondent from the same “Aagar Vakshi” or “Vagsh”. The first respondent’s counsel argues that the second respondent has sold only “a piece” of Aagar Vakshi. The sale deed records: “All that the piece of land known as Aagarvakshi, situated at Borim”. That means, that piece of property known as Aagar Vakshi—the whole of Aagar Vakshi—not a piece from the property known as Aagar Vakshi. It is an archaic rhetorical device employed in the sale deed; it does not say, to my mind, that a part of Aagar Vakshi was sold.

45. As to the mutation, it was after 1975. The mutation, it seems, was at the second respondent’s behest. If at all he wanted the revenue records to reflect the true state of affairs, the second respondent could have ensured that the property he had admittedly sold recorded in the purchaser’s name. The petitioners did purchase, the dispute about the extent notwithstanding. But their names have not been incorporated. A party’s failure to mutate does not affect his title if it can be established from other unimpeachable sources, however.

46. Either party may have a good case on merits. That good case needs evidence to establish its credentials. For that, trial is *sine quo non*. Until then, the property should be preserved. Nothing more. The probative value of the affidavit, the legitimacy of mutation, and the compensatory considerations in the land acquisition are all matters for the trial. We cannot foreclose them with our conjectures.

47. The petitioners claim through 1975-sale deed; the first respondent claims through 2014-sale deed. Pending the suit, especially in the face of an interim injunction, the respondents wanted to fill the loopholes in their case. So they executed a rectification deed, modifying the boundaries. They pressed that deed, too, into service. But it is a *post litem motam* document, it requires no consideration. Between the

petitioners and the second respondent, this is the second-round litigation. Bad blood or strained relations are evident.

48. Under these circumstances, the trial Court, I reckon, has judiciously exercised its judicial discretion. It granted one part of the interim relief and refused the other. Just because it has not ritualistically referred to the *prima facie* case, balance of convenience, and the irreparable loss, the order does not get detracted from its merits. In fact, the appellate Court has read too many things into the order—at an interlocutory stage.

(e) Can this Court, under Article 227 of the Constitution, interfere with the appellate Court's judgment?

49. Let us consider the authorities cited by the first respondent. In *Shalini Shyam Shetty*, the writ petition was under Article 226 of the Constitution. In that context, the Supreme Court has observed that a proceeding under Article 226 is not the appropriate measure for adjudicating disputes relating to property, including title. A regular suit, in fact, is the appropriate remedy for resolving property disputes between private persons. Jurisdiction under article 226 is extraordinary and is meant to be used only against statutory infraction by public authorities.

50. Referring to the Bombay High Court Applets Side Rules, *Shalini Shyam Shetty* notes that the petitions under Article 227 cannot be called writ petitions. Faced with the amendment Section 115 of CPC suffered, it has further observed that Article 227 can be invoked by the High Court *suo moto* as a custodian of justice. An improper and too frequent an exercise of this power will be counter-productive and will rob this extraordinary power of its strength and vitality. The power is discretionary and has to be exercised sparingly on equitable principle. In other words, the object of superintendence under Article 227, both administrative and judicial, is to maintain efficiency, smooth and orderly

functioning of the entire missionary of justice in such a way as it does not bring it into any disrepute.

51. In *Shivchandrai Jhunjhunwala Charitable Trust*, this Court per Sinha D.D., J., has considered the contours of Article 227 in the face of the amended Section 115 of CPC. The backdrop for this adjudication was the practice the parties adopted to withdraw the revision petitions under Section 115 of CPC and convert them into those under Article 227 of the Constitution. This Court has held that “merely because decision is erroneous, discretion under Article 227 of the Constitution need not be exercised unless the error of law is apparent on the face of the record.” According to it, when the High Court exercises power under Article 227 of the Constitution particularly in relation to proceedings against Civil Court’s interlocutory orders, the Court should also remember the mandate of the amended Section 115 of CPC, besides the regular parameters.

52. We may cap this discussion with the Supreme Court’s recent decision in *Mohd. Inam v. Sanjay Kumar Singhal*^[1], Per Bhushan Gavai J, the Apex Court has culled out the jurisdictional scope of revision under Article 227 of the Constitution from various decisions that hold the field to this day:

(a) While exercising its jurisdiction, a revisional court can reappraise evidence, but that should be for the limited purpose of its ascertaining whether the fact-finding court’s conclusion is wholly unreasonable.

(b) The revisional court could examine the facts available in order, to discover whether the court or tribunal below had “correctly or on a firm legal basis” approached the matters on record to decide the case.

¹¹[[2020 SCC OnLine SC 540

(c) Though finding of facts may not be open to being interfered with, in a given case if the finding of fact is given on a wrong premise of the law, the revisional court could interfere.

53. I reckon this case attracts all the above three principles.

Conclusion:

54. So, I hold that the appellate Court has upset the trial Court's judicial discretion with no justifiable grounds. It has, thus, exceeded its jurisdiction. As a result, I set aside the impugned judgment, dt.19.08.2016, and restore the trial Court's order, dt.20.11.2015.

55. As a matter of abundant caution, I reiterate none of the observations in this disposition shall affect the parties' rival claims and contentions during the trial.

Tail Piece:

A Strange Practice:

56. As we have already noted, first, the trial Court granted injunction in the petitioners' favour. The appellate Court reversed it; it has vacated the injunction. The petitioners have filed this writ petition. Then, this Court initially, on 16 September 2016, ordered thus: "Ad-interim relief to operate as interim relief in terms of prayer clause (b), till the disposal of the petition." And the prayer clause (b) concerns "temporary injunction concerning the respondents and/or their agents ... from entering and interfering in any manner with the suit property" and so on. That is, this Court granted to the petitioners an interim injunction as did the trial Court.

57. On 9 June 2020, the first respondent (the subsequent purchaser) complained to this Court that the injunction in the petitioners' favour would not empower them to change the physical features. So, he, as the defendant, sought a counter injunction. An injunction against an injunction. The relief it sought was this:

“[T]hat the Respondent No.1 and 2 either by themselves or through their agents ... be restrained from *interfering with the suit property*, changing the nature of the suit property and doing any activity in the suit property till the disposal of the said writ petition.”

58. This Court, through its order, dt.12 June 2020, ordered “the respondent to maintain status quo till the returnable date.” True, the first respondent did plead about the previous injunction, but in the rush of the things at an admission stage, no court will likely read every line in the file before it grants some interim protection. Instead faced with an injunction already granted, it is for the respondent to seek the modification, variation, or even vacation of that injunction; but not a counter injunction which results in this Court’s contradicting itself. That is not cricket.

Result:

59. The writ petition is allowed; the appellate Court’s order/judgment, dt.19.08.2016, is set aside; the trial Court’s order, dt.20.11.2015, is restored.

No order on costs.

DAMA SESHADRI NAIDU, J.

NH