

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Writ Petition No. 2470 of 2020

Vivek Ramesh Zambare Vs. Anandrao Zinguji Zambre

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. U.J. Deshpande, Advocate for the petitioner
Mr. Pratik Mehta, Advocate for the respondent

CORAM : MANISH PITALE, J.

DATED : OCTOBER 22, 2020

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. Heard learned counsel for the petitioners. In this petition, the sole respondent appeared on Caveat through counsel and filed reply in the matter. Hence, the writ petition was taken up for final disposal.

3. The petitioner herein is original plaintiff, who is aggrieved by the impugned order dated 21/03/2020, passed by the Court of District Judge-2, Akola (Appellate Court), whereby, appeal filed by respondent (original defendant) was allowed and order passed by the Trial Court i.e. the Court of Civil Judge (Senior Division), Akola, on Exh.5 was set aside.

4. The petitioner has filed a suit for permanent injunction against the respondent in the present case, claiming that the respondent deserved to be restrained from peaceful possession of petitioner in the suit property, which happened to be a portion of a larger property in respect of which the petitioner had a sale deed in his favour. Although the title of the suit says that it is a suit for declaration and permanent injunction, the prayer clause clearly shows only a prayer for permanent injunction.

5. In the aforesaid suit, an application for temporary injunction was filed on behalf of the petitioner, claiming that he was in possession of the suit property and that he deserved a direction against the respondent, restraining him from disturbing the possession of the petitioner. This was opposed by the respondent, claiming that he had continued in possession of 4 Gunthas of land, which was the suit property, for a considerable period of time and that he was already having a cattle-shed in the said piece of land.

6. The rival parties relied upon certain documents in support of their respective claims. The Trial Court found that the petitioner had made out a prima facie case in his favour and that irreparable loss would be caused, if temporary injunction was not granted as balance of convenience was also in favour of the petitioner. On this basis, the application was allowed.

7. Aggrieved by the same, the respondent filed appeal before the Appellate Court, which stood allowed by the impugned

order. Mr. U.J. Deshpande, learned counsel appearing for the petitioner vehemently submitted that the approach adopted by the Appellate Court was wholly unsustainable, because the Trial Court had referred to and considered the documents relied upon by rival parties and reached a logical conclusion while granting the application for temporary injunction. In such a situation, it was submitted that the Appellate Court could not have exercised jurisdiction to interfere with the order passed by the Trial Court. It was further submitted that the Appellate Court erred in taking into consideration documents, including a statement made by the petitioner before the police, in coming to the conclusion that the respondent was in possession of the suit property for the past 15 years where he had constructed the cattle-shed. Reliance was placed on the judgments of the Hon'ble Supreme Court and this Court to support the aforesaid contention raised on behalf of the petitioner.

8. On the other hand, Mr. Pratik Mehta, learned counsel appearing for the sole respondent / Caveator submitted that the impugned order did not deserve interference, as the findings rendered by the Trial Court were clearly perverse and they deserved interference.

9. In the present case, a perusal of the order of the Trial Court shows that the said Court has correctly proceeded on the basis that while deciding an application for grant of temporary injunction, the Court has to see only the question of possession. After referring to the said principle, the Trial Court proceeded to refer to the documents relied upon by the rival parties. The Trial

Court relied upon sale deed in favour of the petitioner, 7/12 extracts i.e. record of rights and the mutation entry. The findings on the aspect of prima facie case, balance of convenience and grave and irreparable loss were all based on the aforesaid documents.

10. On the other hand, the Appellate Court not only considered the said documents, but also took into consideration certain complaints and statement made by the petitioner in respect of the land in question. The Appellate Court specifically referred to a statement dated 30th March, 2018 of the petitioner recorded by the police. Upon perusal of the said statement, the Appellate Court came to a conclusion that prima facie it appeared that the respondent was indeed in possession of 4 Gunthas of land and that, therefore, the order of temporary injunction granted by the Trial Court was not sustainable.

11. A perusal of the material on record does indicate that although on the one hand certain documents pertaining to title of the entire 80 R land in favour of the petitioner show that there is indeed a sale deed in his favour, as also 7/12 extracts indicating that the petitioner is in possession. But, the consistent case of the respondent is that he has been in possession of 4 Gunthas out of the total area, which is subject matter of the aforesaid sale deed, for at least 15 years wherein he has constructed a cattle-shed. A perusal of the statement made by the petitioner before the police, on which the Appellate Court has placed much reliance, does indicate that the petitioner himself has conceded to the aforesaid fact regarding possession of the respondent in 4 Gunthas of land

out of total area, which was the subject matter of the aforesaid sale deed.

12. As noted above, the question for consideration at the stage of deciding the application for grant of temporary injunction is as to who can be said to be prima facie in possession of the suit property on the basis of over all material on record. The documents of title along with the entire material as available on record is to be taken into consideration. In the present case, the Trial Court did refer to material that was relied upon by the respondent, but, such material was not analyzed and considered by the said Court while rendering conclusions in favour of the petitioner.

13. In this situation, it becomes clear that reliance placed by the learned counsel appearing for the petitioner on judgments of the Hon'ble Supreme Court and this Court can be of no assistance, because this Court has come to the considered conclusion that the findings rendered by the Trial Court were not based on the proper appreciation of material available on record. In such a situation, the Appellate Court would certainly interfere in the order passed by the Trial Court. One of the judgments on which reliance is placed by the learned counsel appearing for the petitioner i.e. **Maria Margarida Sequeira Fernandes and others Vs. Erasmo Jack De Sequeira (Dead) Through LRs (2012) 5 SCC 370**, pertains to a completely different situation where the Hon'ble Supreme Court was considering an order whereby the petitioners therein were directed to handover possession and to vacate the suit property.

14. In view of above, this Court is of the opinion that no error can be attributed to the impugned order passed by the Appellate Court.

15. Accordingly, the writ petition is dismissed.

16. No order as to costs.

JUDGE

MP Deshpande