

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

WRIT PETITION NO. 4168 OF 2020

1. Raju Mahadu Khose
Age; 49 years, Occu.: Agri.,
2. Popat Laxman Auti
Age: 51 years, Occu.: Agri.,
3. Rajendra Maruti Chaudhari
Age: 45 years, Occu.: Agri.,
4. Sakharam Rambahu Kaware
Age: 65 years, Occu.: Agri.,
5. Sadashiv Tulshiram Kaware
Age: 65 years, Occu.: Agri.,
6. Balasaheb Laxman Pathare
Age: 49 years, Occu.: Agri.,

All R/o Parner, Tq. Parner,
Dist. Ahmednagar

..PETITIONERS

VERSUS

Krishi Utpanna Bazar Samiti Parner,
Through Secretary
Shivaji Maruti Pansare
Age: 52 years, Occu.: Agri.,
R/o Parner, Tq. Parner,
Dist. Ahmednagar

..RESPONDENT

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Mr. S.S. Kulkarni, Advocate for petitioners and for respondent nos. 1 to 6 in
CA/8676/20

Mr. M.S. Kulkarni, Advocate for respondent in petition and for respondent
no.7 in CA/8676/20

Mr. A.S. Sawant, Advocate for applicants - intervenors

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CORAM : R.G. AVACHAT, J.
RESERVED ON : 11th JANUARY, 2021
PRONOUNCED ON : 19th JANUARY, 2021

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for the parties finally, by consent.

2. This writ petition is directed against judgment and order passed by the District Judge, Ahmednagar in Miscellaneous Civil Appeal No. 2 of 2020 dated 30th January, 2020. By the impugned judgment and order, the petitioners (original defendants) in suit, being Regular Civil Suit No. 654 of 2019, came to be restrained from making further construction on the suit property till the decision of the said suit.

FACTS OF THE CASE IN BRIEF :

3. The respondent – Krushi Utpanna Bazar Samiti Parner (plaintiff) claimed to have initially purchased land admeasuring 1 H 32 R in Gut No. 4124, which totally admeasures 3 H 43 R. The respondent erected it's godowns, tin sheds and administrative building on the said land. Since it found the said land to have been inadequate to cater its needs, it further purchased 38 R land from the very gut number under sale deed dated 16th September, 2015. The remaining land in the original Gut No. 4124 came to

be designated as Gut No. 4124/1. The petitioners (defendants) and ten others purchased 8R land from Gut No. 4124 under the sale deed dated 20th April, 1999. In revenue record, the land purchased by the respondent came to be assigned a separate gut no. 4124/2. The petitioners (defendants) allegedly entered on the land purchased by the respondent (plaintiff) and started making construction thereon. The respondent (plaintiff) had, therefore, filed Regular Civil Suit No. 214 of 2019 for fixation of boundaries of it's land and consequential relief of injunction restraining the petitioners (defendants) from obstructing it's possession over the land in the said suit. The respondent (plaintiff) was unsuccessful in temporary injunction application moved in the said suit. The appeal preferred thereagainst was also dismissed. It, therefore, preferred Writ Petition No. 11774 of 2019. On 30th September, 2019 said writ petition was withdrawn with liberty to move an application before the trial Court for withdrawal of the suit (R.C.S. No. 214 of 2019) with liberty to file a fresh suit. Accordingly, the respondent (plaintiff) withdrew the suit and has filed the suit, being Regular Civil Suit No. 654 of 2019, for possession of the land allegedly encroached by the petitioners (defendants). Consequential relief of perpetual injunction restraining the petitioners from obstructing it's possession over the suit land, has also been prayed for. Application (Exh.5) for temporary injunction moved in this subsequent suit was rejected by the trial Court on 30th December, 2019. The respondent/plaintiff, therefore, preferred

Miscellaneous Civil Appeal No. 2 of 2020 before the District Judge. The District Judge, by its order dated 30th January, 2020 impugned in this writ petition, partly allowed the appeal.

4. Mr. S.S. Kulkarni, learned counsel for the petitioners (defendants) would submit that the respondent (plaintiff) had been unsuccessful in the former suit. The said suit was unconditionally withdrawn. Based on the same facts and circumstances, subsequent suit came to be filed. The trial Court rightly rejected the application for temporary injunction since there was no change in the facts and circumstances of the case, based on which the District Judge had dismissed the respondent's (plaintiff) Miscellaneous Civil Appeal No. 60 of 2019. According to learned counsel, the map drawn by the surveyor appointed as Court Commissioner in the former suit had already been before both the Courts in the former suit and miscellaneous appeal as well. The appellate Court had rightly observed the plaintiffs/defendants to have been in possession of 8R of land purchased under the original sale deed in the year 1999. Learned counsel relied on *Skyline Education Institute (Pvt.) Ltd. Vs. S.L. Vaswani and Ors. AIR 2010 SC 3221*, *Wander Ltd. And Ors Vs. Antox India P. Ltd. 1990(Supp.) SCC 727 (SC)* *Abidbhai Ibrahimbhai and Another Vs. Mohammed Ejaz Mohd. Bashir and Another 2019 (3) All M.R. 299* and *Baban Anantrao Naik Vs. Pramila Uttamrao Yenare and Another 2010 BCI 338*, to submit that when the trial Court has exercised its

discretion in refusing to grant ad-interim injunction, the appellate Court ought not to have substituted its own discretion and allowed the appeal. Learned counsel read out the following observations of the Hon'ble Apex Court in the case of *Skyline Education Institute (Pvt.) Ltd.* (supra) as under :-

13. This Court reversed the order of the Division Bench and observed:

"... In such appeals, the appellate court will not interfere with the exercise of 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 exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal 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 a different view may not justify interference with the trial court's exercise of discretion."

5. Mr. M.S. Kulkarni, learned counsel for the respondent (plaintiff) would, on the other hand, submit that after withdrawal of the former suit, the original land owners executed deed of correction describing boundaries of the land (suit land) sold to the respondent (plaintiff). After withdrawal of former suit, the petitioners (defendants) again started making construction on some of the portion of the suit land. Same gave fresh cause of action for

filing of subsequent suit. Learned counsel read out the relevant portion of the impugned judgment to submit that the order impugned in this writ petition has been passed in due exercise of discretion. In the facts and circumstances, no interference is, therefore, called for.

6. It was originally a land bearing Gut No. 4124 total admeasuring 3 H 43 R. The respondent (plaintiff) purchased land admeasuring 1 H 32 R therefrom. Later on, it again purchased 38 R land from the same Gut No. 4124/2 in the year 2015. It may be noted that though land Gut No. 4124 was sub-divided, in the revenue record, the same remained one piece of land. Since under the sale deed dated 16th September, 2015 no boundaries of the land purchased by the respondent (plaintiff) were described and its former suit, therefore, was found by the Court to be not maintainable for the relief of demarcation of boundaries of the suit land therein, the respondent (plaintiff) withdrew the suit. Correction deed came to be executed on 12th September, 2019 giving boundaries of the land sold to the respondent (plaintiff) under sale deed dated 16th September, 2015. It is true that the petitioners (defendants) and some others purchased 8 R land from Gut No. 4124 way back in 1999. Therefore, if deed of rectification executed giving boundaries of the land sold to the respondent (plaintiff) is found to be prejudicial to the interest of the petitioners (defendants), the same would not be binding on them and can be observed that the same was afterthought. The suit is

however, yet to go for trial. The respondent (plaintiff) had admittedly purchased a big piece of land in Gut No. 4124 way back in 1992. When it found the said land inadequate to cater its needs, it would be necessarily like to purchase a piece of land that would be adjacent to the land already held by it.

7. No doubt, the plaintiff has to prove its own case. The fact however, remains that the original land owners of Gut No. 4124 have sold the land therein piecemeal to various persons including the parties to this writ petition. Some of the co/joint owners, who have purchased 8R land, alongwith the petitioners, filed affidavits before the appellate Court stating therein that the petitioners have staked claim to the land different than the one purchased under the sale deed in 1999. Affidavits of those co/joint owners have very much relevance since no one would make a statement which runs counter to his own interest.

8. In the map drawn by the surveyor, appointed as Court Commissioner in the former suit, the land purchased by the petitioners (defendants) is shown in the rectangular shape running east to west. The petitioners (defendants) admittedly initiated construction on the said land. Whereas, the description of land purchased by them given in their sale deed does disclose that it is a strip of land, to the north of which is a road. The said strip is in north-south direction. As such, the petitioners (defendants)

claim possession over the land other than one described in their sale deed.

The appellate Court has, therefore, rightly observed as under :-

“12. Description of the defendant’s property given in R.C.S. No. 241/1999 and defendant’s sale deed shows that defendant’s land is the 8R strip running north sought and it is situated adjacent to the road towards north side of entire Gat No.4124. Therefore description of the area owned by defendant as per their sale deed does not tally with the area in defendant’s possession shown in the measurement map. Original owner of Gat No. 4124 who has sold land out of said gat to plaintiff as well as defendants has confirmed four boundaries of the land sold to the plaintiff by executing correction deed on 12/09/2019. Admittedly defendants are making construction over the property shown in their possession in measurement map. Therefore it is necessary to prevent defendants from carrying out further construction in order to avoid further complications in execution of decree if passed in plaintiff’s favour in future. As far as relief of restraining defendants from making encroachment in the suit property and disturbing plaintiffs possession is concerned, survey map shows that they are in possession of particular portion of the suit property. Plaintiffs have not brought before court circumstances showing that apart from said area defendants are encroaching upon any other portion of the suit property by disturbing defendants possession. Therefore I came to the conclusion that plaintiffs have proved prima-facie case for granting temporary injunction restraining defendants from carrying on further construction on the property in their possession till final disposal of suit.”

9. The trial Court, by rejecting application (Exh.5), was very much impressed by the observations of the appellate Court which had affirmed order of rejection of interim injunction application in the former suit. The order of the trial Court in this case is found to be inconsistent with the material on record. The appellate Court was, therefore, justified to upset the trial Court's order by substituting its own discretion to grant relief of interim injunction. I do not find any reason to interfere with the impugned order.

10. Writ petition is, therefore, dismissed. Rule is discharged.

(R.G. AVACHAT, J.)

SSD