

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

951 **WRIT PETITION NO. 6907 OF 2022**

RAVINDRA ONKAR PATIL AND ANOTHER
VERSUS
SHILABAI UTTAMBHAI PATIL AND OTHERS

...
Advocate for Petitioners : Mr. Shah Subodh P.
Advocate for the respondents : Mr. R.N. Dhorde, Sr. Advocate
h/f. Mr. V.R. Dhorde
...

CORAM : MANGESH S. PATIL, J.

DATE : 5 JULY 2022

ORAL ORDER :

Heard. Rule. Rule made returnable forthwith. Mr. Dhorde waives service. At the joint request the matter is taken up for disposal at the stage of admission.

2. The petitioners are the original plaintiffs who had filed a suit for declaration about being the tenants in the suit properties and for perpetual injunction restraining the respondents - defendants from obstructing their possession. Both the sides had filed applications for temporary injunction. The trial court granted the temporary injunction in favour of the petitioners and rejected the application of the respondents. Both the sides challenged the common order by separate appeals. The lower appellate court has quashed, set aside and reversed the order of the trial court. It has refused to confirm injunction in favour of the petitioners but granted it in favour of the respondents.

3. The learned advocate Mr. Shah would strenuously submit that it is a suit for injunction to protect possession. There was enough material on the record to substantiate their claim of being in possession of the suit properties. The question of title was irrelevant. The respondents without putting up any counter claim sought temporary injunction against the petitioners to the effect that they shall not obstruct their possession, however, no such relief was available to be had in view of the peculiar wording of clause (a) of Order XXXIX Rule 1 of the Code of Civil Procedure, as interpreted by this court in the matter of **Nanasaheb S/o Sakharam Bhalekar Vs. Dattu S/o Dhondiba Bhalekar and others; 1991 Mh.L.J. 685**. He would submit that the discretion that was exercised by the trial court was judicious. There was no perversity or arbitrariness. The lower appellate court without pointing out as to how the discretion exercised by the trial court was misplaced, has undertaken a fresh scrutiny and substituted his discretion in the place exercised by the trial court. Such a course was not available. The order of the trial court was neither perverse nor arbitrary and the lower appellate court in an appeal under section 104 r/w. Order XLIII of the Code of Civil Procedure could not have caused any interference.

4. Learned advocate Mr. Shah would further submit that in-fact the observations and conclusions drawn by the appellate court are palpably perverse and clearly ignore the material on the record. It

also does not refer to the circumstances indicating possession of the petitioners over the suit properties.

5. Learned senior advocate Mr. Dhorde for the respondents supports the order under challenge. He would submit that the circumstances relied upon by the petitioners and the trial court have been rightly met by the lower appellate court. The petitioners themselves are unsure as to the stand to be taken. Initially, they claimed to be the owner of the suit properties. While filing the suit, they changed their version and claimed to be tenants. He would further submit that apart from the fact that the issue regarding tenancy cannot be gone into by a civil court, the petitioners had approached the authorities under the Maharashtra Tenancy and Agricultural Lands Act. Their claim of being tenants has been turned down. In view of such inconsistent stands being taken by the petitioners, they were not entitled to claim any discretionary relief. The lower appellate court has rightly caused interference and reversed the order.

6. I have carefully considered the rival submissions and perused the papers. It is quite apparent that for whatever reasons, the petitioners have now changed their stand and merely claim to be tenants in the suit properties. This implies that they admit the title of the respondents no. 1 to 3 who are real sisters of the petitioner no. 1.

7. It is trite that in such kind of matters, the evidence regarding possession is vital. Even a trespasser or a person in settled

possession of the property is entitled to hold the possession so long as he is not dis-possessed by following the due process of law.

8. Though there have been consistent revenue entries indicating ownership and possession of the respondents no. 1 to 3 for years together, the proceedings in the form of change in revenue entries was initiated. Talathi had submitted the prescribed information to the Tahsildar in a requisite form mentioning that the petitioners were in possession. Though Tahsildar and thereafter even the Sub Divisional Officer specifically concluded that the respondents no. 1 to 3 were the owners of the property, the conclusion drawn by Tahsildar that the petitioners were in possession has not been reversed by the learned Sub Divisional Officer.

9. Pertinently, though the fact has been subsequently denied in the written statement of the respondent no. 4, the statement of adjoining owners recorded before the Tahsildar purportedly demonstrates that even the respondent no. 4 was a signatory and admitted petitioners' possession over the suit properties. Except the denial in the written statement, neither the respondents no. 1 to 3 independently nor even the respondent no. 4 ever seem to have raised any objection in respect of this circumstance. At this juncture, the conclusion drawn by the Tahsildar that the petitioners were in possession though they were not the owners of the suit properties stands as it is.

10. The lower appellate court has clearly misread this piece of evidence. In spite of a specific conclusion drawn by the Tahsildar, the learned Judge has concluded that Tahsildar had held the petitioners to be not in possession.

11. The afore-mentioned circumstances are indicative of the fact that even if the petitioners *prima facie* are unable to demonstrate any right in them to hold back the possession of the suit property, at this stage of the proceeding even this much material was indeed sufficient to exercise the discretion in favour of the petitioners. The trial court had exercised it for the reasons recorded in the order. By no stretch of imagination, the conclusion drawn by the trial court could be said to be either perverse, arbitrary or capricious.

12. It is trite that the courts exercising powers under section 104 r/w. Order XLIII of the Code of Civil Procedure have inherent limitation. They can cause interference only if the order passed by the lower court is perverse or arbitrary and not otherwise. It was therefore imperative for the lower appellate court to have objectively demonstrated as to how the order of the trial court granting injunction to the petitioners was perverse or arbitrary. Without demonstrating it, it had no jurisdiction to cause any interference.

13. As far as the relief of temporary injunction being claimed by the respondents, admittedly, there is no counter claim. In the petitioners' suit, they are claiming temporary injunction not to obstruct

their possession. Going by the wordings of clauses (a), (b) and (c) of Rule 1 of Order XXXIX of the Code of Civil Procedure, there is a marked distinction as to the circumstances under which the parties to a suit can claim injunction. It is only under clause (a) that defendant would be entitled to claim temporary injunction to protect the suit properties. It is only when the property in dispute is in danger of being wasted, damaged or alienated that the defendant can claim temporary injunction. The relief of injunction as regards protection of possession is concerned it falls under clause (c). Only the plaintiff is entitled to claim temporary injunction. This is what has been laid down by this court in the matter of **Nanasaheb V. Dattu** (supra).

14. Without understanding the niceties of such provisions, the learned Judge of the lower appellate Court has even illegally set aside the order of the trial court refusing temporary injunction granted to the respondents - defendants.

15. The writ petition is allowed.

16. The judgment and order passed by the lower appellate court is quashed and set aside and the one passed by the trial court is restored.

17. At this juncture, the learned senior advocate Mr. Dhorde for the respondents submits that the lower appellate court had directed the parties to maintain *status quo* which order was in operation from

24-06-2022 till 04-07-2022 and the same may be continued till the respondents approach the Supreme Court.

18. The learned advocate Mr. Shah strenuously opposes the request. He submits that in-fact during the pendency of the appeal, the operation of the order passed by the trial court was not stayed till 24-06-2022 and it was only thereafter that the lower appellate court had directed the parties to maintain *status quo* till yesterday.

19. Considering the nature of the dispute, the order of *status quo* continues for a period of three weeks to enable the respondents to approach the Supreme Court.

20. Rule is made absolute in above terms.

[MANGESH S. PATIL]
JUDGE

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