

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION 8019 OF 2022
WITH
INTERIM APPLICATION 2465 OF 2022**

Hamid Gulabmohiddin Mulani-Mulla ... Petitioner
Versus
Vishwadeep Mohan Sawant ... Respondent

Mr. Jignesh Chauhan a/w Supriya Gurav i/by Mr. Sachin M. Bondkar
for the Petitioner.

Dr. U. P. Warunjikar a/w Siddhesh Pilankar for the Respondent.

**CORAM: ROHIT B. DEO, J.
DATE : 26th JULY, 2022**

P.C. :-

. The petitioner is the plaintiff in Regular Civil Suit 107 of 2021 which is instituted against the respondent-defendant for decree of perpetual injunction restraining the defendant from disturbing the possession of the plaintiff *qua* the suit property, which is described as land admeasuring 32R situated to the north of Gut 697, Mauje Hingangaon Khurd, Taluka Kadegaon, Dist. Sangli.

2. The case of the plaintiff is that land admeasuring 20.33 HR assigned Gut 697 was jointly owned by the plaintiff and his four brothers and was partitioned on 15th June, 1974. In the partition, Hissa

5 admeasuring 45R fell to the share of the plaintiff. Adjacent to the cattle shed on the said land, the suit land admeasuring 32R was lying barren and it was agreed between the five brothers that the plaintiff shall develop and cultivate the said barren land as owner thereof. The plaintiff stated that on 18th November, 2009, his brother Ayub executed sale deed in favour of his wife Khurshad whereby land admeasuring 2 hectares was transferred. According to the plaintiff, the said sale deed covered 50R land which was not owned by Ayub. It is then stated that Khurshad executed sale deed dated 20th June, 2014 purporting to transfer land admeasuring 1.28 HR to the defendant. The plaintiff contended that the sale deed is illegal since the area and the boundaries are incorrectly mentioned. The sum and substance of the plaintiff's allegations is that on the basis of the illegal sale deed, the defendant is obstructing the possession of the plaintiff over the suit property.

The plaintiff stated that the defendant had instituted Regular Civil Suit 212 of 2015 seeking injunction, which suit was dismissed in default on 2nd March, 2011.

3. The plaintiff preferred an application under Order XXXIX, Rules 1 and 2 seeking temporary injunction on the lines of the prayer in the substantive suit.

4. The learned Trial Judge was pleased to allow application under Order XXXIX, Rules 1 and 2 and enjoined the defendant from disturbing the possession of the plaintiff, vide order dated 27th October, 2021.

5. The learned Trial Judge recorded a *prima-facie* finding, on the basis of the recitals in the sale deed dated 20th June, 2014 executed by Khurshad in favour of the defendant, that the sale deed includes excess land i.e. land not owned by Khurshad or her husband Ayub. The learned Trial Judge then referred to the supplementary partition deed dated 19th June, 1976 which makes a reference to the barren land admeasuring 32R. The learned Trial Judge then referred to 7/12 extract pertaining to Gut 697 and the entry dated 23rd April, 2021 and held that since the said entry records the name of the plaintiff *qua* area admeasuring 32.72R, the ownership rights of the plaintiff to the suit property stand established.

The learned Trial Judge considered the contention of the defendant that the plaintiff has sold various portions of the land from land admeasuring 45R and presently, he is the owner of the land admeasuring 4R, as is apparent from the 7/12 extract dated 23rd August, 2018 and the sale deeds and mutation entries placed

on record. The learned Trial Judge observed that the transactions done by the plaintiff are established. The learned Judge, however, brushes under the carpet that aspect reasoning that the plaintiff is not seeking injunction in respect of the area admeasuring 45R which fell to his share in the 1974 partition. Holding that *prima-facie* case is established, the injunctive relief is granted by the order dated 27th October, 2021, as noted supra.

The defendant preferred Miscellaneous Civil Appeal 181 of 2021, which is allowed by the learned District Judge-5, Sangli vide judgment dated 19th March, 2022, which is impugned herein.

The learned Appellate Judge referred to the partition chart and found that out of Gut 697, the plaintiff was given only 45R cultivable land. The learned Appellate Judge then notes that the plaintiff executed sale deed in favour of his grandsons which covers 45R land mentioned in the partition chart and additional land admeasuring 24.75R situated adjacent to the percolation tank, which portion is not reflected at all in the partition chart. The learned Trial Judge then notes that the family members of the plaintiff executed several sale deeds on 18th January, 2009.

As a fact, the plaintiff also sold 80R land to his grandsons on 18th November, 2009. This aspect is emphasized by the learned Appellate Judge to indicate that the plaintiff did not object to the legality of the sale deed executed by his brother Ayub in favour of Khurshad on the same date. The learned Appellate Judge observes that since the plaintiff did not question the sale deed between Ayub and Khurshad, he cannot be heard belatedly questioning the sale deed.

Dealing with the additional partition on which the plaintiff relied, the learned Appellate Judge noted that the memorandum of additional partition is introduced only in the litigation and it is *prima-facie* observed that the signatures appearing on the registered partition deed of 1974 and on the subsequent memorandum of additional partition are not similar. The learned Appellate Judge then found that *prima-facie* the memorandum of additional partition is doubtful.

The learned Appellate Judge then considered the significance of Regular Civil Suit 212 of 2015 instituted by the defendant and the injunction order passed in the said suit, thus :-

“20. Most important and interesting thing is that, defendant has filed suit bearing RCS No.212/2015. In that suit present defendant sought relief of temporary injunction against present plaintiff as well as his brothers and sons. His application came to be allowed and defendants therein including present plaintiff were restrained from causing obstruction to the peaceful possession of the plaintiff over the suit property till decision of the suit. It also reveals that, said suit subsequently came to be dismissed. It also reveals that, defendants therein have filed appeal bearing MCA No.97/2016 against the order of temporary injunction which has been decided by District Court on 04.11.2019 and the appeal filed by plaintiff and others came to be dismissed. Thereby temporary injunction granted in favour of defendant came to be confirmed. However, subsequently that suit came to be dismissed. While dismissing that suit Trial Court has vacated order of interim injunction. As per defendant his suit came to be restored. However, though he took recourse of aforesaid authorities, as interim order of injunction has been vacated by Trial Court specifically, it can be said that, merely because of restoration of suit that order not automatically stands revived. However, though these are all factual aspect, here it has to be taken into consideration that, in that suit Trial Court as well as Appellate Court specifically prima facie held that, by way of sale deed possession of alienated portion was parted in favour of defendant. In such circumstances in absence of any prima facie evidence to establish on record that, after dismissal of that suit said portion came into possession of the plaintiff and the manner in which it has been came in his possession, it is very hard to conclude at this prima facie stage merely on the basis of suspicious memorandum of partition and mutation entry appearing in revenue record that, suit property is in actual possession and cultivation of the plaintiff.”

6. Before considering the rival submissions, I must observe, that in view of the restoration of Regular Civil Suit 212 of 2015, the interim order stood revived and to that extent the learned Appellate Judge is not right in holding that the order of interim injunction is not revived.

7. The learned counsel for the plaintiff would reiterate the submissions which found favour with the learned Trial Judge. It is

submitted that the learned Appellate Judge did not look into the material on record in the correct perspective and the reversing judgment is vitiated. Dr. Warunjikar, who appears on behalf of the defendant, would support the view taken by the learned Appellate Judge.

8. The scope and ambit of writ jurisdiction is not akin to that of an Appellate Court. An error, here and there, is not sufficient to warrant interference in writ jurisdiction. This is particularly true if the order or judgment which is assailed in writ jurisdiction is rendered in exercise of discretionary power. If a plausible view is taken, the writ Court must be slow to interfere. It would be impermissible for the writ Court to interfere with the judgment of the Appellate Court which is rendered in exercise of discretionary power, in the absence of demonstrable perversity or irrationality or grave error in applying the principle of law to the facts on record. Moreover, the error or flaw must have occasioned serious miscarriage of justice for the writ Court to interdict.

9. In my considered view for reasons more than one, the plaintiff has not made out a case for grant of injunctive relief. The first reason is that the sale deed executed by the brother of the plaintiff in favour of

Khurshad on 18th November, 2009, on which day the plaintiff too executed sale deed in favour of his grandsons, was not questioned till the institution of the suit in the year 2021. The submission of the learned counsel for the plaintiff, that the plaintiff was not aware of the recitals in the sale deed executed by his brother in favour of Khurshad, is *prima-facie* not palatable. The members of the family executed the sale deeds, at the same office. Be that as it may, the plaintiff was well aware of the stand of the defendant in the Regular Civil Suit 212 of 2015 which the defendant instituted and to which suit the plaintiff was a party. The plaintiff as a fact suffered an injunctive order in the said suit and the appeal preferred came to be dismissed. While the suit was dismissed in default, it is not disputed, that the suit is restored to file. In such a situation, the institution of the suit for injunctive relief in 2021 raises serious doubt as regards the contention of the plaintiff that he is in possession of 0.35R land and the defendant is interfering with the possession. The other reason is, that as noted by the learned Appellate Judge, the additional partition chart of 1976 is suspicious. The material is belatedly introduced in the 2021 litigation. The learned Appellate Judge has found that the signatures on the 1974 partition deed and the 1976 memorandum do not tally. However, I would

refrain from making any positive observation on that aspect which must be left for the Trial Court to consider after the evidence is adduced. The third reason is that in teeth of revival of the injunctive order, it would not be appropriate to permit two orders to hold the field, which are mutually inconsistent, one in favour of the plaintiff and the other in favour of the defendant.

10. On a holistic consideration of the issue, I am not inclined to interfere in writ jurisdiction.

11. The petition is dismissed.

12. Pending Interim Application, if any, shall stand disposed of.

[ROHIT B. DEO, J.]