

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

WRIT PETITION 7557 OF 2021

Sonabai Bandu Patil and Anr.	...	Petitioners
<i>Versus</i>		
Shri Amar Ananda Patil and Ors.	...	Respondents

Mr. Dheeraj D. Patil a/w Nikhil Pawar for the Petitioners.
Mr. Drupad S. Patil for the Respondents.

CORAM: ROHIT B. DEO, J.
DATE : 22nd JUNE, 2022

P.C. :-

1. The petitioners are the original plaintiffs who have instituted Regular Civil Suit 557 of 2020 seeking a declaration that the sale deed dated 9th July, 2020 executed by defendants 1 and 2 in favour of the defendant 3 is illegal and vulnerable to cancellation and further injunctive relief restraining the defendants from continuing with the construction and disturbing the possession of the plaintiffs qua the suit property.

2. The plaintiffs persuaded the learned Trial Judge to grant temporary injunction restraining the defendants from going ahead with the construction on the suit property and in appeal, the said order is reversed.

3. Before I advert to the reasons spelt out by the Appellate Court, it would be opposite to consider the pleadings, or rather the lack thereof, in the plaint. While brevity is a welcome virtue, the plaint is absolutely laconic and the material particulars are conspicuous by their absence. I have not come across any averment in the plaint explaining the source or the nature of the right in favour of the plaintiffs. The suit property is described as house property 170 admeasuring 113.64 sq. mtrs. including construction of 16.37 sq. mtrs. According to the plaintiffs, their property is situated to the west of the suit property. A vague statement is found in paragraph 4 of the plaint that the suit property was in physical possession of the plaintiffs. How and when the plaintiffs came in possession is left to imagination. There is no other averment in the entire plaint touching the right, either to ownership or to the possession qua the suit property.

4. The learned Trial Judge does not appear to have considered the quality and the nature and extent of the pleadings. The learned Trial Judge observed that the perusal of the photographs and the documents show that old construction is demolished and new construction started. The learned Trial Judge then refers to the assessment extracts from the year 1973-74 to 1977-78 in respect of the house property 109, which

appears to have been renumbered as house property 170. The learned Trial Judge notes that it was only in the year 1981 that the name of Ananda Bhiva Patil, the father of defendant 1 is recorded in the assessment extracts and that till 1977-78, it is the predecessor of the plaintiffs who was shown in possession. This observation alone ought to have persuaded the learned Trial Judge to lean against exercising discretion in favour of the plaintiffs, since admittedly 1981-82 the assessment extracts reflect the name of the father of defendant 1. The learned Trial Judge then considers in great detail, the manner in which the monthly meeting was held on 27th July, 1984 and resolution passed, pursuant to which the name of the father of defendant 1 was recorded in the assessment extracts. Although, the development supra occurred 16 years prior to the institution of the suit, what is held against the defendants is their purported inability to show how the possession was transferred from the plaintiffs to the father of defendant 1. For such and certain other reasons spelt out, the learned Trial Judge held that the plaintiffs are in possession of the property. The learned Trial Judge noted that the Grampanchayat granted permission to the defendants to carry out the construction. The certificate is held against the defendants and the learned Trial Judge reasons that the certificate

shows that there is imminent threat of dispossession.

5. The Appellate Court has given sound reasons for reversing the injunctive order. It is true that certain documents are placed on record in appeal and are considered. The provisions of Order XXI Rule 27 would apply also to appeals preferred under Order XLIII and the learned Appellate Court ought to have kept out from consideration the documents placed on record in appeal. However, even if the documents which are placed on record are kept out of consideration, I do not see any error in the ultimate conclusion reached. As I have noted *supra*, the plaint is absolutely *sans* material particulars and every material fact is in the realm of speculation. It is not known how the plaintiffs claim to be the owners, nor is it known how the plaintiffs were placed in possession of the suit property. The assessment extracts, atleast from 1981, reflect the name of the father of defendant 1. The construction is admittedly pursuant to the permission granted by the Grampanchayat. The fact that the construction has commenced, and the commencement of the construction is not in dispute, would suggest that it is the defendants who are in possession. The learned counsel for the petitioners does argue that the construction is at a nascent stage and all that is done is the foundation and the plinth. Be

that as it may, the fact is that the possession of the defendants is clearly indicated, atleast *prima-facie*, by the fact that the construction has commenced.

6. Insofar as irreparable damage aspect, I do not think that completion of the construction would prejudice the plaintiffs. The interest of the plaintiffs can be safeguarded by recording that any construction which may be carried out, shall be at the risk of the defendants who shall not claim any equity in view of the completion of the construction. The learned counsel for the defendants does not join issues and submits that he would advise and counsel his clients appropriately on the implication of the observation *supra*.

7. I am not impressed by the submission of the learned counsel for the petitioners that the learned Trial Court having exercised discretion, the Appellate Court ought to have refrained from interfering. The Appellate Court is also a fact finding Court. The Appellate Court is expected to independently appreciate the material on record. It is true that if the view taken by the Trial Court is reasonable, ordinarily the Appellate Court would be loath to interfere. In the present case, as noted *supra*, sound reasons are recorded by the Appellate Court for interfering with the injunctive order.

8. I do not see any reason to interfere in writ jurisdiction. The petition is dismissed.

BIPIN
DHARMENDER
PRITHIANI

Digitally signed
by BIPIN
DHARMENDER
PRITHIANI
Date:
2022.06.24
18:47:20
+0530

[ROHIT B. DEO, J.]