

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

WRIT PETITION NO. 760 OF 2022

(Mahesh Damodardas Bhutada and another ..vs.. Champadevi Nandlal Bhutada and others)

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

Court's or Judge's orders

Mr. A.V. Bhide, Counsel for the petitioners.

CORAM : ROHIT B. DEO, J.

DATED : 11-02-2022

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

2. Petitioners are the defendants in Regular Civil Suit 33/2017 which is instituted by the respondents herein seeking declaration, partition and separate possession of the suit property, which is described in paragraph 10 of the suit plaint as residential house assigned numbers 87/1 and 87/2, and are renumbered 20/1 and 20/2 situated within the jurisdiction of Gram-Panchayat Panwadi, Tahsil-Arvi, District-Wardha.

3. The petitioners, who shall be referred to as the defendants hereinafter, filed their written statement and lodged counter-claim seeking injunctive relief against the plaintiffs qua agricultural fields assigned survey numbers 22/1 and 22/2 renumbered 299.

4. The defendants sought temporary injunction vide application Exhibit 37 seeking to restrain the plaintiffs from interfering with their possession qua the agricultural fields. The learned trial Judge was pleased to dismiss the application seeking temporary injunction vide order dated 27-7-2018, *inter alia* holding that it is the plaintiffs who are in possession of the agricultural fields.

5. Dissatisfied, the defendants preferred Miscellaneous Civil Appeal 25/2018, which the learned District Judge-1, Wardha dismissed vide judgment dated 27-8-2020. The learned Appellate Judge concurred with the finding rendered by the learned trial Judge and held that the defendants failed to prove possession qua the agricultural fields.

6. The defendants are assailing the concurrent views of the Courts below by invoking supervisory jurisdiction under Article 227 of the Constitution of India. In the context of the claim of the defendants to be in possession of the agricultural fields qua which there was alleged interference, it would not be necessary to reproduce the respective narratives. Both the Courts below have rightly proceeded on the premise that in order to establish entitlement to temporary injunction of the nature sought, the defendants were obligated to *prima facie* establish their possession. Both the Courts below have, after considering the material on record, recorded a finding

that the defendants are not in possession, and are, therefore, not entitled to an injunction restraining the plaintiffs from disturbing the possession.

7. Perusal of the material on record and the facts culled out in the order and judgment impugned, reveal that the plaintiffs placed on record 7/12 Extracts to establish cultivating possession and supplemented the said material with bills evidencing purchase of fertilizers, documents evidencing sale of the agricultural produce to the Agricultural Produce Market Committee and Traders, electricity bills and the demands. The defendants, who are admittedly residing in Andhra Pradesh, since several years did not place on record a single document to establish their possession qua the suit property, apart from a Gift-deed dated 08-2-1980 and a legal notice dated 30-11-2009.

8. I requested the learned Counsel for the defendants Mr. A.V. Bhide to bring to my notice the material which would *prima facie* establish the possession of the defendants, and in response, Mr. A.V. Bhide would rely on the recitals in the Gift-deed dated 08-2-1980 and the legal notice, and would further urge that in the absence of material to show dispossession, after the exchange of the legal notice in the year 2009, the defendants must be presumed to be in possession.

9. It is trite law, that in exercise of jurisdiction under

Article 227 of the Constitution of India, it would not be permissible to interfere with exercise of discretion, muchless concurrent views of the Courts below, unless there is a grave error of law or perversity in appreciation of material which has occasioned serious miscarriage of justice, demonstrable. In exercise of jurisdiction under Article 227 of the Constitution of India, this Court is not expected to re-appreciate the material, as if an appellate Court, and would be loath to substitute its views for the views, muchless concurrent views, of the Courts below. It would be apt to notice a relatively recent decision of the Hon'ble Supreme Court in ***M/s Garment Craft v. Prakash Chand Goel in Civil Appeal 314 of 2022***.

“18. Having heard the counsel for the parties, we are clearly of the view that the impugned order is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a

conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice. Explaining the scope of jurisdiction under Article 227, this Court in Estralla Rubber v. Dass Estate (P) Ltd. has observed:-

“6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to.”

10. In view of the heavy reliance placed on the notice issued by the plaintiffs to the predecessor-in-title of the defendants deceased Damodardas and others, which

according to Mr. A.V. Bhide establishes conclusively that the defendants were in possession of agricultural fields Survey 20/1 and 20/2, the relevant portion of the said notice may be noticed.

“10. That you noticee Nos.3 and 4 had duped the house property of my client bearing survey 20/1, 20/2, situated in village Panwadi, Tahsil-Arvi, District-Wardha. You have in connivance with noticee No.1 fabricated false document and tried to take possession of my clients ancestral house which is totally illegal and fraudulent. You are hereby instructed to keep away from my clients’ house property which is in dilapidated condition. Else my clients will be constrained to make you both i.e. notices Nos.3 and 4 party to all proceedings to be initiated for cheating, criminal breach of trust, fraud fabrication of false document and forgery.”

I am afraid, that the notice dated 28-10-2009 issued by the plaintiffs is not, by any stretch of imagination, an admission that the defendants are in exclusive possession of the agricultural fields in question. That apart, both the Courts below have rightly emphasized that the crucial aspect is the factum of settled possession as on the date of the application seeking temporary injunction, and I have no hesitation in holding that both the Courts have rightly concluded that the defendants were not in possession of the two agricultural fields qua which the temporary injunction was sought.

The learned Appellate Judge has observed that

while the defendants rely on the Gift-deed dated 08-2-1980, the same is not acted upon for forty years and that there is no corroborative material to show that the defendants are in possession of the agricultural fields. I do not see any error in the said observation.

11. A view which is not only possible or plausible, but which appears to be the only view which could have been taken in the teeth of the material on record, is concurrently taken and there is no case made out for exercise of jurisdiction under Article 227 of the Constitution of India.

12. The writ petition is without merit and is dismissed.

JUDGE

adgokar