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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 730/2022 & CM APPL. 32728/2022, CM APPL. 32729/2022

SUNIL SINGH Petitioner
Through: Mr. Abhinav Bajaj and Mr. Saksham Ojha, Advs.

versus

JAI BHAGWAN TYAGI Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)
27.07.2022

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1. This writ petition, under Article 227 of the Constitution of India, assails order dated 28th March 2022, passed by the learned Additional District Judge in RCA 145/2018 (*Sunil Singh v. Jai Bhagwan Tyagi*).

2. RCA 145/2018 was preferred by the petitioner against the order dated 13th August 2018, passed by the Civil Judge in CS SCJ 1641/2018 (*Jai Bhagwan Tyagi v. Sunil Singh*) instituted by the respondent against the petitioner. By the said order, the learned Civil Judge restrained the petitioner (as the defendant before her) from raising any construction in the suit property during the pendency of the suit. The appeal of the petitioner, against this decision, stands dismissed by the impugned order dated 28th March 2022.



Facts

3. The respondent, as the plaintiff in CS SCJ 1641/2018 (hereinafter “the suit”) claimed to be co-owner of land admeasuring 550 sq. yards in Khasra No. 27/1/2 in Sangam Vihar (“the suit property”).

4. Ownership over the suit property was claimed by the respondent on the basis of revenue records (*khatauni*) for the year 1995-1996. The respondent sought to contend, in the plaint, that the suit property was still undivided among co-owners and was an open and vacant land. Possessory rights over the suit property were also asserted by the respondent, along with other co-owners.

5. The plaint alleged that the petitioner was seeking to obtain forceible possession of the suit property and had, along with his accomplices, started construction on the suit property on 1st June 2018, resulting in a boundary wall coming up on the suit property.

6. It was in these circumstances that the respondent instituted CS SCJ 1641/2018 against the petitioner, seeking an order of injunction, restraining the petitioner from carrying out any illegal construction on the suit property as well as mandatory injunction, directing the petitioner to demolish the construction already made.

7. The petitioner, as the defendant before the learned SCJ, contended, *per contra*, that he was the owner of the suit property under an Agreement to Sell, receipt and Will. He also claimed to be in



physical possession of the suit property and contested the allegation that he was carrying out any permanent construction on the suit property, stating that he was merely doing repair work.

8. The respondent preferred, along with the suit, an application under Order XXXIX Rules 1 and 2 of the CPC, seeking interim relief.

9. The said application was decided by the learned SCJ by judgment dated 13th August 2018. The learned SCJ restrained the petitioner from carrying out any further construction in the suit property, pending disposal of the suit.

10. Aggrieved, the defendant/petitioner appealed to the learned ADJ, vide RCA 145/2018 (*Sunil Singh v. Jai Bhagwan Tyagi.*).

11. By the impugned order, the learned ADJ has dismissed the appeal and maintained the interim direction, issued by the learned SCJ, restraining the petitioner from carrying out any further construction on the suit property.

12. The learned ADJ has observed, in the impugned order, that the claims to ownership over the suit property, as asserted by the petitioner as well as by the respondent, were unsupported by any factual material and in a state of jeopardy.

13. Apropos the respondent, it is observed that he had filed no document to substantiate his claim of ownership and actual physical



possession over the suit property or to substantiate the allegation that the petitioner was carrying out illegal or unauthorised constructions thereon.

14. The learned ADJ has observed that the Khatauni, in which the respondent was recorded as one of the joint owners of the suit property, could not, by itself, constitute evidence of ownership, as the revenue record did not disclose ownership or title over the property referred to therein. Title to property, it is observed in the impugned order, could only be established by documents prescribed by law. Neither of the parties had produced any such registered document, on the basis of which they could claim ownership over the suit property.

15. Having said so, the learned ADJ has also observed that possessory rights could be claimed even *de hors* establishing ownership over the property in question. However, in the present case, as the suit property was in the form of vacant land, possessory rights, in order to be established, would also require evidence to be led.

16. In these circumstances, the learned ADJ has held that, in order to ensure that, till evidence was led and the matter was tried, the *status quo* was not disturbed, the petitioner had justifiably been restrained from carrying out further construction on the suit property.

17. The impugned order, in my view, is wholesome and, in any event, does not brook interference under Article 227 of the Constitution of India. The scope of interference by the Court under



Article 227 of the Constitution of India stands amply clarified by the following passages from *Estralla Rubber v. Dass Estate (P) Ltd.*¹, *Garment Craft v. Prakash Chand Goel*² ; *Puri Investments v. Young Friends & Co.*³:

***Estralla Rubber*¹:**

“7. This Court in *Ahmedabad Mfg. & Calico Ptg. Co. Ltd. v. Ram Tahel Ramnand*⁴ in para 12 has stated that the power under Article 227 of the Constitution is intended to be used sparingly and only in appropriate cases, for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and, not for correcting mere errors. Reference also has been made in this regard to the case *Waryam Singh v. Amarnath*⁵. This Court in *Bathutmal Raichand Oswal v. Laxmibai R. Tarte*⁶ has observed that the power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as a court of appeal and that the High Court in exercising its jurisdiction under Article 227 cannot convert itself into a court of appeal when the legislature has not conferred a right of appeal. Judged by these pronounced principles, the High Court clearly exceeded its jurisdiction under Article 227 in passing the impugned order.”

***Garment Craft*²**

“15. Having heard the counsel for the parties, we are clearly of the view that the impugned order [*Prakash Chand Goel v. Garment Craft*⁷] is contrary to law and cannot be sustained for several reasons, but primarily for deviation from

¹ (2001) 8 SCC 97

² 2022 SCC OnLine SC 29

³ 2022 SCC OnLine SC 283

⁴ AIR 1972 SC 1598

⁵ AIR 1954 SC 215

⁶ AIR 1975 SC 1297

⁷ 2019 SCC OnLine Del 11943



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. [*Celina Coelho Pereira v. Ulhas Mahabaleshwar Kholkar*⁸] 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.

16. Explaining the scope of jurisdiction under Article 227, this Court in *Estralla Rubber v. Dass Estate (P) Ltd*¹ has observed : (SCC pp. 101-102, para 6)

“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

⁸ (2010) 1 SCC 217



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.”

Puri Investments³

“14. In the case before us, occupation of a portion of the subject-premises by the three doctors stands admitted. What has been argued by the learned counsel for the appellant is that once the Tribunal had arrived at a finding on fact based on the principles of law, which have been enunciated by this Court, and reflected in the aforesaid passages quoted from the three authorities, the interference by the High Court under Article 227 of the Constitution of India was unwarranted. To persuade us to sustain the High Court's order, learned counsel appearing for the respondents has emphasized that full control over the premises was never ceded to the medical practitioners and the entry and exit to the premises in question remained under exclusive control of the respondent(s)-tenant. This is the main defence of the tenant. We have considered the submissions of the respective counsel and also gone through the decisions of the fact-finding fora and also that of the High Court. At this stage, we cannot revisit the factual aspects of the dispute. Nor can we re-appreciate evidence to assess the quality thereof, which has been considered by the two fact-finding fora. The view of the forum of first instance was reversed by the Appellate Tribunal. The High Court was conscious of the restrictive nature of jurisdiction under Article 227 of the Constitution of India. In the judgment under appeal, it has been recorded that it could not subject the decision of the appellate forum in a manner which would project as if it was sitting in appeal. It proceeded, on such observation being made, to opine that it was the duty of the supervisory Court to interdict if it was found that findings of the appellate



forum were perverse. Three situations were spelt out in the judgment under appeal as to when a finding on facts or questions of law would be perverse. These are: —

- (i) Erroneous on account of non-consideration of material evidence, or
- (ii) Being conclusions which are contrary to the evidence, or
- (iii) Based on inferences that are impermissible in law.

15. We are in agreement with the High Court's enunciation of the principles of law on scope of interference by the supervisory Court on decisions of the fact-finding forum. But having gone through the decisions of the two stages of fact-finding by the statutory fora, we are of the view that there was overstepping of this boundary by the supervisory Court. In its exercise of scrutinizing the evidence to find out if any of the three aforesaid conditions were breached, there was re-appreciation of evidence itself by the supervisory Court.

16. In our opinion, the High Court in exercise of its jurisdiction under Article 227 of the Constitution of India in the judgment under appeal had gone deep into the factual arena to disagree with the final fact-finding forum.”

18. That apart, the impugned order insofar as it upholds the decision of the learned Civil Judge, on an application by the respondent under Order XXXIX Rules 1 and 2, is fundamentally discretionary in nature.

19. The restricted scope of interference with discretionary orders by courts hierarchically superior is well-known. In *Wander Ltd. v. Antox India P. Ltd.*⁹, the Supreme Court has held thus, even in respect of scope of interference with discretionary orders in exercise of appellate



jurisdiction:

“13. On a consideration of the matter, we are afraid, the appellate bench fell into error on two important propositions. The first is a misdirection in regard to the very scope and nature of the appeals before it and the limitations on the powers of the appellate court to substitute its own discretion in an appeal preferred against a discretionary order. The second pertains to the infirmities in the ratiocination as to the quality of Antox’s alleged user of the trademark on which the passing-off action is founded. We shall deal with these two separately.

14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. 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”

20. Even more circumscribed, in my considered opinion, would be the scope of interference with discretionary orders, while exercising jurisdiction under Article 227 of the Constitution of India.

21. It is only where the exercise of discretion is manifestly perverse or completely against the evidence on record, that the Court would

⁹ 1990 SCC 727



interfere.

22. No such manifest perversity can be said to visit the impugned order dated 28th March 2022 passed by the learned ADJ. Nor can it be said that, by merely being restrained from carrying out further construction on the suit property, the petitioner has been subjected to any kind of irreversible prejudice. Even if one were to consider the balance of convenience, the impugned decision of the learned Civil Judge and the decision of the learned ADJ which stand affirmed thereby, are entirely justified.

23. Where rights to land and property are concerned it is well-settled that, ordinarily, maintenance of *status quo* as it exists is the advisable course of action to pursue as, once construction is undertaken, the equities of the situation change, and it is rarely that, at the final stage of the proceeding, the construction is demolished or the *status quo* ante restored.

24. In view thereof, I do not find the present case to be one justifying interference by this Court under Article 227 of the Constitution of India.

25. The petition is accordingly dismissed in *limine* with no order as to costs.



26. The learned SCJ is, however, directed to make all efforts to expedite the trial, of course, keeping in view the quantum of work before him and the priority that the present case deserves to be accorded.

C. HARI SHANKAR, J

JULY 27, 2022

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