

SGPunde

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPEAL FROM ORDER NO. 41 OF 2022

Vikram Anilkumar Patel

... Appellants
[Orig. Plaintiff]

Versus

Smt. Savitaben Pravinchandra Patel & Ors.

... Respondents

...

Mr. Shailesh P. Brahme – Advocate for appellants

Mr. Sandeep Gorde Patil – Advocate for respondent nos. 1 and 2

Mr. Vijay B. Patil – Advocate for respondent nos. 5 to 7

....

CORAM : GAURI GODSE, J.

DATE : 03rd FEBRUARY, 2023

PER COURT :

1. This appeal is preferred by the original plaintiff for challenging the order of dismissal of his application for temporary injunction. The appellant has filed Special Civil Suit No. 90 of 2022 in the Court of Civil Judge Senior Division, Jalgaon, for challenging the Sale Deed dated 16th March 2022, registered on 17th March, 2022, by respondent nos. 1 to 4 in favour of respondent nos. 5 and 7.
2. The learned counsel for the appellant submits that it is the case of the appellant that the suit property was originally owned by the company being Kalpita Builders Pvt. Ltd. The appellant's father

was a Director in the said Company and the appellant is the shareholder of the said company. It is further submitted that the company had unauthorizedly transferred the suit property in the name of one of the Directors i.e. Pravinchandra Patel on 3rd November, 1987. Pursuant to that transfer, the respondent nos. 1 to 4 are claiming title over the suit property through the said Director Pravinchandra Patel. On the basis of the said transfer of 1987, respondent nos. 1 to 4 executed the sale deed in favour of respondent nos. 5 to 7, which is under challenge in the present suit.

3. It is, thus, the submission of the appellant that since the appellant is a shareholder in the company and the company has unauthorizedly transferred the property of the company in the name of Pravinchandra Patel, the appellant has filed the suit. Since a substantive suit was filed for challenging the sale and for protecting the property originally belonging to the company, the learned Trial Judge, ought to have granted an order of temporary injunction as prayed. By way of an application at Exhibit – 6 an application was filed praying for a temporary injunction, restraining the respondents from changing the nature of the suit property and creating any third party interest in respect of the

suit property. Thus, it is submitted that since the claim in the substantive suit is with respect to the title of the property, it is necessary to protect the nature of the property during the pendency of the suit.

4. Further, it is submitted that the learned Trial Judge has relied upon the judgment in Special Civil Suit No. 63 of 1999, for refusing the relief to the appellant. The learned Judge relying upon the said judgment held that, issue no. 2, which was decided in the said suit, would demonstrate that there is already a finding recorded with respect to the ownership of the suit land in favour of Pravinchandra Patel on the basis of the sale deed dated 03rd November, 1987. Thus, the learned counsel for the appellant submits that only on the basis of the said judgment, the temporary injunction could not have been denied by the learned Judge, more so when the appellant has independently raised substantive claim with respect to the suit property being a property of the company.
5. Hence, it is submitted that the reasons given by the learned Trial Judge are perverse and, therefore, this Court is required to interfere with the same and for that purpose the appeal would require consideration.

6. I have considered the submissions and perused the record of the appeal. Perusal of the plaint filed in the year 2022 shows that the appellant has challenged the transfer of the suit property in the year 1987 by the company in the name of Pravinchandra Patel. Though there are pleadings with respect to the challenge to the said transfer, there is no specific case made out as to in what manner the said sale will be void and illegal. More so, there is no relief sought in the suit with respect to the said sale deed in favour of Pravinchandra Patel. The specific challenge in the suit is to the subsequent sale which is made on the basis of 1987 sale. The only ground and the locus standi claimed for challenging the said sale of 2022 by respondent nos. 1 to 4, is that the appellant is a shareholder in the company and since his father was a director of the company, the appellant would step into the shoes of his father and therefore is entitled to protect the property of the company.
7. In my view, in absence of any specific pleadings and any case made out, as to in what manner the appellant is claiming any right, title and interest in the suit property, and/or in what manner the appellant's right if any, is likely to be prejudicially affected, prima facie, I do not find that any case is made out for

challenging the sale deed executed by respondent nos. 1 to 4, in favour of respondent nos. 5 to 7. As far as the allegations with respect to the illegal transfer by the company in favour of Pravindchandra Patel are concerned, the same was never challenged by the appellant. All the submissions made in that regard, appear to be in the nature of making allegations of mismanagement at the hands of the Directors of the Company, in transferring the suit property in favour of respondent nos. 1 to 4. It is necessary to note that the sale made by the Company of the suit property way back in the year 1987 to Pravinchandra is not under challenge in the present suit filed in the year 2022. The challenge in the suit is only to the subsequent sale by the respondent nos. 1 to 4. Prima facie, in absence of the challenge to the alienation made in 1987, the challenge to subsequent alienation made on the basis of 1987 sale has no merit. Moreover, being a shareholder, the same would not ipso facto, create any locus standi in favour of the present appellant to file a substantive suit challenging the sale deed executed by respondent nos. 1 to 4, on the basis of title to the suit property, which is not under challenge.

8. It is well settled principle of law that, interlocutory remedy is

intended to preserve rights of a party which may appear on a prima facie case. It is the well established law laid down by the Hon'ble Supreme Court in the case of *Wander Ltd. And another Vs Antox India P. Ltd.*, reported in 1990 (supp) SCC 727, that 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. As held by the Hon'ble Supreme Court, an appeal against exercise of discretion is said to be an appeal on principle and that appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court of first instance, if the discretion has been exercised by the trial court reasonably and in a judicial manner.

9. There is no prima facie case made out, as to in what manner the appellant would succeed in the suit and/or in what manner, would he be entitled to claim any right, title or interest of whatsoever nature in the suit property. Thus, I do not see any reason to grant any order of temporary injunction, as prayed by

the appellant. I do not see any prima facie case made out, for grant of an injunction as prayed. Learned Trial Judge has considered the nature of the suit as well as the nature of the claim as pleaded in the suit. The learned Trial Judge is right in saying that, unless there is any challenge to the sale deed of the year 1987 by the company in favour of Pravindchandra Patel, at the interim stage, the appellant was unable to establish his prima facie right in the suit property. I do not find any illegality or perversity in the reasons given by the learned Trial Judge.

10. I do not find any merit in the appeal, hence, the appeal is dismissed.
11. In view of dismissal of the appeal, pending civil application does not survive and the same is dismissed.
12. At this stage, the learned counsel for the appellant requests for extension of the interim relief for a limited period of four weeks.
13. Learned counsel appearing for the respondent nos. 5 to 7 submit that they are bonafide purchasers of the suit property, which is worth more than Rs. 1.5 crores and they have already suffered loss due to the pending litigation. Hence, if the interim order is continued at this stage, serious prejudice would be caused to the respondents. In such circumstances, the learned counsel opposes

extension of any interim relief which was granted during the pendency of appeal.

14. For the reasons stated above and in the peculiar facts of the case, when the appellant has failed to make out any prima facie case in respect of his any kind of right of whatsoever nature in the suit property, I do not find any valid reason for continuation of the interim relief. Hence, the prayer is rejected.

[GAURI GODSE]
JUDGE