

SGPunde

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPEAL FROM ORDER NO. 38 OF 2021
WITH
CIVIL APPLICATION NO. 3407 OF 2022
IN
APPEAL FROM ORDER NO. 38 OF 2021

Gorakh Sonyabapu Kote & Ors. ...Appellants
Versus
Neha Sunil Agrawal @ Myurial Paul Ribellow & Ors. ... Respondents

...
Mr. S. S. Chapalgaonkar – Advocate for Appellants

...
CORAM : GAURI GODSE, J.
DATE : 14th FEBRUARY, 2023

PER COURT :

1. This appeal from order is preferred by defendant nos. 4 to 18 for challenging the order of injunction granted by the learned Civil Judge Senior Division, Rahata, on 21st January, 2021 in Special Civil Suit No. 39 of 2020.
2. The learned counsel for the appellants submitted that the defendant no. 1 has executed a registered document in favour of the present appellants. He further submitted that the sale deed executed in favour of the present appellants was after taking search of all the necessary record with respect to title of the suit

property. He, therefore, submitted that the appellants are bonafide purchasers of the suit property, hence the order of injunction that is granted by the trial court against the appellants, who are bona fide purchasers, is not passed after taking into consideration the prima facie case made out by the present appellants in their favour.

3. He submitted that there are no prima facie findings recorded for grant of order of injunction and the order of injunction is a drastic injunction, which could not have been passed without there being a full-fledged trial. He therefore submitted that the impugned order requires to be quashed and set aside.
4. I have perused the record of the present appeal. The appellants are claiming title and possession with respect to the suit property on the basis of a registered document executed by defendant no. 1. The learned Trial Judge, from paragraph no. 13 onwards, has in detail dealt with all the documents as well as various orders passed in various proceedings in respect of the suit property and has recorded a prima facie finding in favour of the plaintiffs. The learned Trial Judge has specifically recorded that the right of tenancy and the right claimed by defendant no. 1 on the basis of orders passed under the tenancy proceedings have not attained

finality and hence prima facie it cannot be said that defendant no. 1 had any absolute right with respect to the title as well as possession of the suit property. The learned trial judge has held that the documents of title in favour of appellants shows that they are executed without handing over of possession as reflected in the document and the documents are styled as sale deed without possession.

5. The learned Trial Judge has also examined the orders which were placed on record with respect to the tenancy proceedings regarding the suit properties. After examining all the documentary evidence on record, the learned trial Judge has recorded a prima facie finding that the plaintiffs are in possession of the suit property and are owners of the same.
6. By recording a prima facie finding, the learned Trial Judge has granted the order of injunction restraining the appellants from creating any third party interest and/or disturbing and/or damaging the suit property during the pendency of the suit. This order of injunction is operative since 21st January, 2021. Nothing is shown to me with respect to any prima facie case in respect of the title and/or possession of the appellants over the suit property except for the registered document which is executed in absence

of any conclusive adjudication of tenancy rights of the defendant no. 1 and without any permission under the Tenancy Act for execution of the sale deed. As per the prima facie finding recorded by the trial court, the documentary evidence relied upon by the appellants do not show that possession was handed over to the appellants. The appellants are claiming rights through defendant no. 1. There is nothing shown to me that the tenancy proceedings initiated by defendant no. 1 had attained finality in his favour. The learned Trial Judge has recorded that the tenancy proceedings are not finally decided in favour of defendant no. 1. The learned trial judge has recorded that the documents on record shows that the predecessor is title of plaintiffs (Mirasai) was the tenant purchaser of the suit land and that on examining the various documents as well as orders passed in earlier litigations has recorded a prima facie finding believing the case of the plaintiffs that there was a Samadhi of the predecessor in title of the plaintiffs (Mirasai) on the suit land and that there was an attempt to damage the same. Thus, on appreciation of the documents on record the learned trial judge was of the opinion that balance of convenience was in favour of the plaintiffs and to avoid multiplicity of proceedings, it was found necessary to pass

the order of temporary injunction during the pendency of the suit. In such circumstances, I do not see any reason to interfere with the reasonings recorded by the learned Trial Judge.

7. 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 a well established law laid down by the Hon'ble Supreme Court in the case of *Wander Ltd. And another Vs Antox India P. Ltd.*,¹ 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.

8. The impugned order passed by exercising discretionary powers

1 1990 (supp) SCC 727

cannot be entertained in the appeal by re-examining the documents. There is no perversity or illegality in the findings recorded by the learned trial judge. There is no merit in the appeal from order and the same is dismissed.

[GAURI GODSE]
JUDGE