



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

WRIT PETITION NO.5877 OF 2018

Anant Arjun Thakker

..... Petitioner

Vs.

Pravin V. Sheth and Ors.

..... Respondents

Mr. Kishor K. Malpathak for the Petitioner.

Mr. D. Banerji i/b Mr. Neel Gala for Respondent Nos.4 to 8.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 19 AUGUST 2023.

P. C.

1. Heard

2. The challenge in the petition is to the order dated 9/1/2018 rejecting the petitioners appeal and upholding the findings of the trial Court in an application filed by the petitioner under Order 39 Rule 1 and 2 of CPC seeking temporary injunction. For sake of convenience parties are referred to by their status before trial Court.

3. Special Civil Suit No.11/2007 was instituted by the plaintiff inter alia for specific performance of Memorandum of

Understanding dated 11/5/2005. The suit properties were described in the plaint in paragraph No.3 as (A), (B) and (C) for the reason that at the time of the institution of the suit, property described as 3(A) was standing in the name of defendant No.1, 3(B) was standing in the name of defendant Nos.1 and 2 and 3(C) was standing in the name of defendant No.3. During the pendency of the proceedings original defendant Nos. 1 to 3 sold the suit properties in favour of defendant Nos. 4 to 7 and as such application came to be filed seeking restraining orders against the subsequent transferees from creating further third party rights in the property. The application came to be rejected as against which a challenge was laid before this Court which restricted the injunction only in respect of the property described in paragraph No.3(A) on the ground that Memorandum of understanding had been executed by the petitioner only with defendant No.1. Subsequently the defendant Nos.4 to 7 who are directors of defendant No.8-company sold the property to defendant No.8, who in the process of developing the property amalgamated the properties described in paragraph No.3(A) with the other properties. On 1/11/2014, the petitioner moved an application under Order 39 Rule 1 and 2 of

CPC with the following prayers:

"a) pending hearing and final disposal of the suit, this Hon'ble Court be pleased to pass orders of interim injunction restraining the Defendant Nos.8, its servants, agents or any person/s claiming on behalf of them, from carrying out any construction of the Suit Properties or any part thereof and further restraining them from transferring and/or creating any third party interest of any nature whatsoever upon the properties described in paragraph Nos.3B and 3C of the plaint, lying being and situate at village: Poshir, Taluka: Karjat, District: Raigad, Maharashtra."

4. The trial Court rejected the said application by observing that on page No.2 of the Memorandum of understanding the signatures were only of defendant No.1 and the plaintiff. The trial Court observed that property 3B and 3C is not owned by defendant No.1 and defendant No.2 and 3 are at liberty to dispose of their property at will.

5. The appellate Court upheld the findings of trial Court by taking into consideration that according to the order of the High Court the restriction is only in respect of property described in 3(A). The appellate Court held that if at all the plaintiff had any grievance about the layout which included the property described in 3(A) the plaintiff ought to have sought relief in respect of the layout. The appellate Court also observed that the petitioner has sought a blanket injunction to restrain the defendant from carrying out any construction on the suit properties described in 3(B) and 3(C) and as such rejected the application.

6. Learned counsel appearing for the petitioner submits that while developing the suit property defendant No.8 has amalgamated the property described in 3(A) of the plaint with the other properties. He would further submit that as such it was necessary to restrain defendant No.8 from creating any third party right at least in respect of property described in paragraph 3A. He would further submit that the appellate Court agreed with the submissions of the plaintiff that the defendant No.8 was wanting to develop the property whereby third party rights in the property

would be created and that the layout include some of the property described in 3(A) and would contend that despite the said observation the appellate Court has rejected the appeal. He would submit that the appellate Court ought to have moulded the relief and granted restraining orders in respect of the property described in paragraph 3(A).

7. *Per contra* learned counsel for respondents submits that as against the property which is described in 3(A) an application was moved for breach of the orders of injunction which has been rightly adjudicated by the trial Court and the appellate Court. He would further submit that the appellate Court has rightly considered that the property being 3(B) and 3(C) cannot be the subject matter of the injunction. He would further urge that in exercise of powers under Article 227 of the Constitution of India this Court may not to interfere with the concurrent findings.

8. Considered the submissions and perused the papers with the assistance of learned counsel.

9. *Prima facie* it appears from the material on record is

that the memorandum of understanding was executed between the plaintiff and defendant No.1 i.e. respondent No.1 and the property standing in the name of respondent No.1 is the property which is described in paragraph No.3A. As there were no restraining orders passed in respect of the suit properties, the challenge was raised before this Court in the Appeal from Order in which this Court granted relief only in respect of 3A property. Subsequently the property was taken for development by defendant No.8 and the plaintiff sought relief of injunction restraining the defendant No.8 from carrying out any construction on the suit properties or any part thereof and further from transferring or creating any third party interest in the properties described in paragraph No.3(B) and 3(C) of the plaint. It needs to be noted that this Court had already observed in the Appeal from Order that the memorandum of understanding had been executed between the plaintiff and defendant No.1 only in respect of property described in paragraph 3(A) and as such application which sought the restraining orders in respect of properties described in paragraph 3(B) and 3(C) could not be granted. That apart the relief which was sought in the Interim Application was for order of injunction restraining the

defendants from carrying out any construction on the suit property or any part thereof which necessarily included property described in paragraph Nos.3(B) and 3(C). It was expected that a proper relief be sought in respect of the property described as 3(A) as that was only property which could have been subject matter of any restraining orders and indeed this Court has passed restraining order in respect of 3(A). The relief sought by the plaintiff was to restrain the respondent No.1 from carrying out any construction. It was expected that specific relief to extent of inclusion of 3A property in the layout is sought. However the plaintiff-petitioner sought blanket injunction to restrain the defendants from carrying out any construction. Admitted position was that the property described in 3(A) had been amalgamated with the other properties and as such it was necessary to frame the relief properly and seek orders in respect of property described in paragraph 3(A). That not being done, the Appellate Court has rightly rejected the appeal and upheld the findings of the trial Court.

10. Considering the concurrent findings of fact, there is no reason to interfere with the impugned orders. The petition fails and

stands dismissed.

SHARMILA U. DESHMUKH, J.