



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

902 WRIT PETITION NO. 7511 OF 2024

Vanita Vaibhav Vaidya & anotherPetitioners

VERSUS

Sushil Rohidas Shinde & anotherRespondents

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Mr. A. S. Kulkarni, Advocate for the Petitioners.

Mr. P. S. Shinde, Advocate for Respondent Nos. 1 and 2.

CORAM : R. M. JOSHI, J.

DATE : 25th APRIL, 2025.

PER COURT :

1. This petition takes exception to the order passed by the Appellate Court in Misc. Civil Appeal No. 19/2023 dated 05.03.2024 whereby the order dated 30.11.2022 passed by the Trial Court below Exhibit 5 in Regular Civil Suit No. 1066/2021 allowing said application came to be set aside.

2. Petitioners are Plaintiffs in Regular Civil Suit No. 1066/2021. They filed suit for injunction against Defendants as Defendants were causing interference in possession of Plaintiffs over the suit property bearing plot No. 56 situated at Survey No. 2, part

Senanagar at Mustafabad, Chhatrapati Sambhajinagar. In the said proceeding, application Exhibit 5 came to be filed by the Petitioners seeking temporary injunction against the Defendants.

3. Defendants filed written statement and counter claim. In the counter claim, relief of injunction is sought against the Plaintiffs. Learned Trial Court by passing order dated 30.11.2022 has recorded prima facie finding that the Plaintiffs are the owners and in possession of the suit property and that balance of convenience tilts in their favour. Consequently, application Exhibit 5 came to be allowed. Defendants took exception to this order before the District Court in Misc. Civil Appeal No. 19/2023. Appellate Court set aside the order of injunction on the ground that once suit is filed the parties are required to maintain status quo in respect of the same. There is no other ground taken for setting aside the impugned order. Learned counsel for Respondents however, has drawn attention of this Court to paragraph No. 15 of the impugned order wherein contentions of the parties with regard to the correctness of the measurement/non issuance of notice at the time of measurement is pointed out.

4. Learned counsel for Petitioners submits that there is finding recorded by the Trial Court with regard to the ownership and possession of Plaintiffs over the suit property and without disturbing the said finding, it was not open for the Appellate Court to set aside the order passed below Exhibit 5. It is his submission that merely on the ground that suit has been filed the parties cannot be directed to maintain status quo. It is his further submission that in any case, there is no relief sought by the Respondents before the Trial Court and as such there was no question of considering the said submission of Respondents by the Appellate Court.

5. Learned counsel for Respondents supported the impugned order. It is his basic contention that Defendants have filed counter claim and has sought relief of injunction against the Plaintiffs. A specific query was made as to whether any interim relief application has been moved before the Trial Court. A candid answer thereto is in negative. It is his further submission that there is a serious dispute between that parties with regard to the respective area of Plaintiffs and Defendants. It is his contention that though measurement has been carried out by the Plaintiffs, before carrying

out said measurement, no notice was issued to the Defendants. This, according to him, has been rightly taken into consideration by the Appellate Court. In support of his submissions, he has placed reliance on judgment of this Court in case of Sukhdeo Parashramji Bhugul (Dr.) vs. Wamanrao Nagorao Charhat, **2004(3) Mh.L.J. 724**.

6. Principles in respect of grant or refusal of interim injunction pending suit are fairly settled to say that the Court is required to consider prima facie case being made out by the parties and balance of convenience. Here in this case, the Trial Court has recorded a finding that the Petitioners/Plaintiffs are the owners and in possession of the suit property. Resistance by Defendants to the suit as well as filing of appeal indicates that there was interference in possession of the ownership of Plaintiffs over the suit property. In such circumstances, findings recorded by the Trial Court cannot be faulted with. As against this, the Appellate Court in Misc. Civil Appeal No. 19/2023 has not set aside said findings or has not made any observation that the findings recorded by the Trial Court with regard to possession and ownership of Plaintiffs over the suit property are incorrect. The Appellate Court set aside the order only on the ground that it is a principle that both the parties have to

maintain the suit property in same condition till disposal of the suit. This is not the principle of law. The principle of law is that mere filing of the suit does not entitle any party to seek relief. In order to make out a case for grant of interim injunction during pendency of suit, a prima facie case is required to be made out. It would be open for the otherside, to show that balance of convenience tilts in his favour and grant of relief is not justified. Mere filing of the suit cannot be treated as existence of substantial dispute between the parties which would require the parties to maintain status quo in respect of the suit property. The Appellate Court has not recorded any findings about case being made out by Plaintiff or that balance of convenience tilts in favour of Defendants. It failed to take notice of the fact that though counter claim is filed by the Defendants, no interim relief is sought from Trial Court.

7. Insofar as observations made in paragraph No. 15 of the impugned order are concerned, there is no dispute about the fact that Defendants/Respondents herein have raised issue with regard to the measurement before the appropriate authorities. Thus, the observations made in this paragraph are inconsequential to the order passed by the Appellate Court.

8. In view of above, Petitioners have made out a case for causing interference in the impugned order as a result of which, petition stands allowed. Impugned order dated 05.03.2024 passed in Misc. Civil Appeal No. 19/2023 stands set aside. Order passed below Exhibit 5 in Regular Civil Suit No. 1066/2021 stands restored. Petition stands allowed.

(R. M. JOSHI)
Judge

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