



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10093 OF 2024

Sahebrao Sopan Ghorpade
Age: 74 years, Occu: Agriculture
R/at: Golewadi, Tal. Koregaon,
Dist. Satara

..Petitioner

Versus

Tanaji Sopan Ghorpade
Age: 70 years, Occu: Agriculture & Business,
R/at: Golewadi, Tal. Koregaon,
Dist. Satara.

Now R/at: 905, City Trust Co-op Hsg Society,
C-Wing, Flat No. 905, 9th Floor,
N.M. Joshi Marg, Byculla,
Mumbai – 400 001.

...Respondent

Mr. Nikhil Wadikar, i/b Nandu Pawar, for the Petitioner.
Mr. Dilip Bodake, for the Respondent.

CORAM: N. J. JAMADAR, J.
DATED : 22nd APRIL 2025

JUDGMENT:

1. Rule. Rule made returnable forthwith and with the consent of the learned Counsel for the parties, heard finally.
2. This Petition under Article 227 of the Constitution of India 1950, calls in question the legality, propriety and correctness of the judgment and order dated 3rd February 2024 passed by the learned District Judge,

Satara in MCA No. 132 of 2022, whereby an Appeal preferred by the Respondent-Plaintiff was allowed by setting aside the order dated 24th March 2022 passed by the Trial Court in SCS No. 197 of 2019, and the Petitioner-Defendant came to be restrained from alienating or creating any third party interest in the land bearing Survey No. 98/3+4B admeasuring 20 R situated at Koregaon, District Satara (“the suit land”) and also from disturbing the possession of the Plaintiff over the suit land, till the decision of the Suit.

3. The background facts leading to this Petition can be summarized as under:

3.1 The Petitioner/Defendant is the brother of the Plaintiff. One Krishna Shinde (Thakar) was the holder of the agricultural land bearing Gat No. 98/3+4B admeasuring 64 R. The Plaintiff and the Defendant had purchased the said land in the name of the Defendant. The Plaintiff and the Defendant had developed the said land, dug bore-wells and had also constructed their respective houses.

3.2 Eventually, as the family members of the Plaintiff and the Defendant were not getting along well, there was an oral partition and the Plaintiff and Defendant started to cultivate their separate portions of Gat No. 94/3+4B and a Memorandum of Partition was executed on 4th November 2016 to record the factum of partition.

3.3 In the month of November 2016, as the Defendant was in financial constraints, the Defendant proposed to sell 20 R land out of his share (“the Suit land”). The Plaintiff agreed to purchase the said land for a consideration of Rs. 18,50,000/-. A registered Agreement for Sale came to be executed on 8th November 2016 incorporating the terms and conditions of the contract, including that the Defendant would clear the encumbrance on the suit land of Satara District Nagari Patpedhi.

3.4 Though it was recorded in the Agreement for Sale that the possession of the Suit land would be delivered at the time of the execution of the Sale Deed, yet, since the entire consideration was parted with by the Plaintiff, the Defendant delivered possession of the Suit land and, thus, a separate possession receipt was also executed in favour of the Plaintiff and since then the Plaintiff had been in possession and cultivation of the Suit land.

3.5 As the Defendant professed to dishonestly sell the Suit land to third parties for an enhanced consideration, the Plaintiff published notices in two daily newspapers to forewarn the members of the public from entering into any transaction with the Defendant with respect to the Suit land.

3.6 The Defendant gave a false and misleading reply to the said public notice. Thus, the Defendant was called upon to perform the contract in accordance with the registered Agreement for Sale. In

response, the Defendant refused to perform the contract. Hence the Suit for specific performance of the contract for sale of the Suit land.

3.7 In the said Suit, the Plaintiff filed an Application for temporary injunction. By an order dated 24th March 2022, the Trial Court was persuaded to reject the Application observing, *inter alia*, that the Plaintiff failed to establish that on the date of the institution of the Suit the Plaintiff was in possession of the Suit land. On the contrary, the Defendant appeared to be in possession and cultivation of the Suit land. Thus, the balance of convenience tilted in favour of the Defendant and he would suffer irreparable loss in the event of grant of interim injunction.

3.8 Being aggrieved, the Plaintiff preferred an Appeal before the District Court. By the impugned order, the learned District Judge was persuaded to allow the Appeal placing reliance on the possession receipt dated 8th November 2016, under which the possession of the Suit land was purportedly given by the Defendant to the Plaintiff. The learned District Judge was of the view that the material on record, especially the Memorandum of Partition (स्मरणार्थ वाटपाचे टिपण) and the possession receipt were, *prima facie*, *sufficient* to dispel the presumption of the correctness of entries in the Revenue Record. Therefore, the learned District Judge restrained the Defendant from alienating or creating any

third party interest in the Suit land and also from causing obstruction to the possession of, and cultivation by, the Plaintiff, of the suit land.

3.9 Being aggrieved, the Defendant has invoked the writ jurisdiction.

4. An Affidavit in Reply has been filed on behalf of the Respondent-Plaintiff.

5. I have heard Mr. Nikhil Wadikar, the learned Counsel for the Petitioner, and Mr. Dilip Bodake, the learned Counsel for the Respondent, at some length. The learned Counsel took the Court through the pleadings and the material on record.

6. Mr. Wadikar, the learned Counsel for the Petitioner, submitted that the learned District Judge was not at all justified in interfering with the discretion exercised by the trial Court in refusing to grant the injunction in favour of the Plaintiff on the basis of material which unmistakably indicates that the alleged transaction of sale was not genuine and the Plaintiff was not at all put in possession of the Suit land. The said Agreement to Sell was executed as a cover for another transaction. The learned Counsel for the Petitioner would submit that in the face of the clear recital in the registered Agreement for Sale that the possession of the Suit land would be delivered at the time of the execution of the Sale Deed, the learned District Judge could not have given undue weight to the possession receipt which was allegedly

executed on the very day of the execution of the registered Agreement for Sale.

7. Mr. Wadikar also laid emphasis on the fact that the Record of Rights of the Suit land appended to the Agreement for Sale indicated that there was an encumbrance of Rs. 50 lakhs in favour of Satara District Nagari Patpedhi on the Suit land. In such circumstances, the Defendant would not have agreed to sell the Suit land for a consideration of Rs. 18,50,000/- and also clear the encumbrance of Rs. 50 lakhs. The learned District Judge has also ignored the overwhelming material which indicates that the Defendant was in possession and cultivation of the Suit land. Reliance was placed on the entries in the Record of Rights and the sugar-cane supply receipts issued by the sugar factories to bolster up the submission that the Defendant had been in possession of the Suit land.

8. Mr. Bodake, the learned Counsel for the Respondent-Plaintiff, supported the impugned order. It was submitted that the learned District Judge was justified in granting injunction as the Plaintiff and Defendant could not have jointly purchased a strip of land to approach the Gat No. 98/3+4B, had the said Gat Number exclusively belonged to the Defendant. The existence of the residential houses of Plaintiff and the Defendant in the land bearing Gat No. 98/3+4B is also incontestable. The claim of the Plaintiff that there was an oral partition

and, subsequently, a Memorandum of said partition was executed, is required to be appreciated in the light of the aforesaid facts. Since a registered Agreement for Sale was executed by the Defendant in favour of the Plaintiff, the jural relationship between the Plaintiff and the Defendant could not have been controverted.

9. Moreover, as the entire consideration was paid by the Plaintiff and the parties had agreed to execute the Sale Deed after the Defendant cleared the encumbrances on the Suit land, the execution of a separate possession receipt was inconsonance with the bargain arrived at between the parties. Cumulatively, the possession receipt and the Memorandum of Partition justify an inference that the Plaintiff was put in possession of the Suit land. Since the Trial Court had ignored relevant material, the learned District Judge was justified in granting the injunction, urged Mr. Bodake.

10. I have given anxious consideration to the submissions canvassed across the bar. To start with the jurisdictional limits of the Appellate Court in an Appeal against the discretionary order deserves to be kept in view.

11. The legal position is well recognized. Ordinarily, the appeal Court is not expected to interfere with the exercise of discretion in the matter of grant of injunction by the trial Court and substitute its own discretion for the same, except where it can be demonstrated that the

discretion has been exercised arbitrarily or perversely, or the impugned order is contrary to the settled principles of law. An arbitrariness in the exercise of discretion or perversity in the order passed by the trial Court can arise where the injunction has been granted sans material or the trial court has declined to grant temporary injunction, despite existence of justifiable material.

12. A profitable reference in this context can be made to a three Judge Bench decision of the Supreme Court in the case of Wander Ltd. and Anr. V/s. Antox India P. Ltd.¹ wherein the following observations have been made :

“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 the 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

11990 (supp) SCC 727

considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in Printers (Mysore) Pvt. Ltd. V/s. Pothan Joseph² :

“... These principles are well established, but as has been observed by Viscount Simon in Charles Oseption & Co. v. Johnston the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case.

The appellate judgment does not seem to defer to this principle.” (emphasis supplied)

13. In the case of Seema Arshad Zaheer and Ors. V/s. Municipal Corporation of Greater Mumbai and Ors.³ the Supreme Court expounded the principles which govern the interference by the appeal Court in the discretionary order passed by the trial Court. The observations in paragraph 32 are material, and, hence, extracted below:

“32. Where the lower court acts arbitrarily, capriciously or perversely in the exercise of its discretion, the appellate court will interfere. Exercise of discretion by granting a temporary injunction when there is 'no material', or refusing to grant a temporary

2(1960) 3 SCR 713

3(2006) 5 SCC 282

injunction by ignoring the relevant documents produced, are instances of action which are termed as arbitrary, capricious or perverse. When we refer to acting on 'no material' (similar to 'no evidence'), we refer not only to cases where there are total dearth of material, but also to cases where there is no relevant material or where the material, taken as a whole, is not reasonably capable of supporting the exercise of discretion. In this case, there was 'no material' to make out a prima facie case and therefore, the High Court in its appellate jurisdiction, was justified in interfering in the matter and vacating the temporary injunction granted by the trial court.” (emphasis supplied)

14. Another three Judge Bench of the Supreme Court in the case of Skyline Education Institute (India) Pvt. Ltd. V/s. S.L.Vaswani and Anr.⁴ after referring to the previous precedents, culled out the principles in the following words :

“22. The ratio of the abovenoted judgments in that once the Court of first instance exercises its discretion to grant or refuse to grant relief of temporary injunction and the said exercise of discretion is based upon objective consideration of the material placed before the Court and is supported by cogent reasons, the appellate court will be loath to interfere simply because on a de novo consideration of the matter it is possible for the appellate Court to form a different opinion on the issues of prima facie case, balance of convenience, irreparable injury and equity.”

4(2010) 2 SCC 142

(emphasis supplied)”

15. On the aforesaid touchstone, reverting to the facts of the case at hand, it appears the learned District Judge was persuaded to interfere with the order of the Trial Court, especially on the aspect of possession, by placing reliance on the possession receipt executed by the Defendant in favour of the Plaintiff and the Memorandum of Partition (स्मरणार्थ वाटपाचे टिपण). The learned District Judge was of the view that these two instruments were sufficient to dispel the presumption of the correctness of the entries in the Revenue Record and documents placed on record by the Defendant to show that he was in actual possession and cultivation of the Suit land. Whether this approach of the learned District Judge is in-consonance with the limited appellate jurisdiction against a discretionary order?

16. First and foremost, it is necessary to note that in the registered Agreement for Sale, there is a clear and categorical recital that the possession of the Suit land was to be delivered at the time of the execution of the Sale Deed. Mr. Wadikar was, thus, justified in canvassing a submission that the said stipulation in the registered Agreement to Sell regarding delivery of possession of the Suit land would prevail over a purported possession receipt executed on the very day of the execution of the Agreement for Sale. Mr. Bodake, the learned Counsel for the Respondent-Plaintiff fairly conceded that there was no

restraint under any law for delivery of the possession of the Suit land and, therefore, the parties were required to be execute a separate possession receipt.

17. Secondly, the relationship between the parties and the attendant circumstances also deserve to be kept in view. The alleged Memorandum of Partition was executed between the parties a fortnight prior to the execution of the registered Agreement to Sell. The interval of time between the Memorandum of Partition and the Agreement to Sell is too short for comfort.

18. The fact that in the Record of Rights of the land bearing Gat No. 98/3+4B, there was an encumbrance of Rs. 50 lakhs as of 22nd July 2014 as against the consideration of Rs. 18,50,000/-, also *prima facie* militates against the jural relationship sought to be created under the registered Agreement for Sale.

19. In addition, the documents on record including entries in the cultivation column of the Suit land and the receipt of supply of sugar-cane indicate that the Defendant had supplied the sugar-cane to the factories over the years. The survey number of the land, its area and the name of the Defendant find mention in the said sugar-cane supply receipts and the bills issued by the sugar factories, specifically and consistently.

20. In the face of the aforesaid material, the learned District Judge ought not to have interfered with the *prima facie* finding of the fact recorded by the Trial Court based on the objective material that the Plaintiff failed to establish possession over the Suit land. The view taken by the Trial Court on the aspect of the possession could, under no circumstances, be termed as perverse. It was, thus, not open for the learned District Judge to substitute his own views on the aspect of the possession for the view of the Trial Court.

21. Resultantly, the impugned order warrants interference.

22. However, at this stage, having regard to the nature of the relationship between the parties, familial and jural, it would be expedient in the interest of justice to protect the subject matter of the Suit till the final decision of the Suit for specific performance. An order to restrain the Defendant from transferring, alienating or otherwise creating third party interest in the Suit land would balance the equities and also equip the Court to workout the equities between the parties at the time of the final adjudication of the Suit.

23. I am, therefore, impelled to partly allow the Petition, affirming the order to the extent the Defendant is restrained from creating, alienating or creating any third party interest in the Suit land, whilst setting aside the order restraining the Defendant from causing obstruction to the possession and cultivation of the Suit land by the

Plaintiff as *prima facie* the Plaintiff does not appear to be in possession and cultivation of the Suit land.

24. Hence the following order:

- (i) The Petition stands partly allowed.
- (ii) The impugned order restraining the Petitioner-Defendant from transferring, alienating or creating further third party interest in the Suit land stands affirmed.
- (iii) The impugned order to the extent it restrains the Defendant from causing obstruction to the possession of, and cultivation by, the Plaintiff of the Suit land stands quashed and set aside.
- (iv) In the circumstances, there shall be no order as to costs.
- (v) Rule made absolute to the aforesaid extent.

[N. J. JAMADAR, J.]