



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5219 OF 2024**

Ankush Genu Dhankude and Ors. ... Petitioners
versus
Lilabai Dattoba Dhankude and Ors. ... Respondents

WITH
WRIT PETITION NO.8628 OF 2024

Ankush Genu Dhankude and Ors. ... Petitioners
versus
Lilabai Dattoba Dhankude and Ors. ... Respondents

Mr. Anil Sakhare, Sr. Advocate i/by Mr. Kalpesh Patil, for Petitioners.
Mr. Girish Godbole, Sr. Advocate i/by Ms. Ketki Gadkari and Mr. Aditya A. Joshi, for Respondent Nos.1 to 8.

**CORAM: N.J.JAMADAR, J.
CLOSED FOR ORDERS ON : 14 JANUARY 2025
PRONOUNCED ON : 25 FEBRUARY 2025**

JUDGMENT :

1. Rule. Rule made returnable forthwith. With the consent of the parties, heard finally.
2. These Petitions assail the legality, propriety and correctness of the orders passed by the learned District Judge in Misc. Civil Appeal Nos.292 of 2023.
3. Shorn of unnecessary details, background facts leading to these Petitions can be summerized as under :
 - 3.1 Shripathi Vithu Dhankude was the original holder of the properties bearing Survey No.28, Hissa No.1 and Survey No.21, Hissa No.3 situated at

Baner, within the limits of Pune Municipal Corporation, more particularly described in para Nos.1a and 1b of the plaint, respectively. Shripathi had three sons, namely, Baban, Genu and Chhabu. The Plaintiffs and Defendant Nos.3A to 3E, 4A to 4H and 5A to 5I are the descendants of Baban. Defendant Nos.1A to 1V are the descendants of Genu. Defendant Nos.2A to 2V are the descendants of Chhabu.

3.2 The Plaintiff claims, on 14 June 1988, there was a partition of the ancestral properties amongst Baban, Genu and Chhabu. It is the claim of the Plaintiffs that the properties described in paragraph 1a of the plaint i.e. Survey No.28/1 was kept out of the said partition as it was grazing land (gavat pad).

3.3 The Defendants who are the descendants of Genu and Chhabu, on the contrary, contend that Survey No.28/1 was not included in the partition as the said land was affected by the provisions of the Urban Land Ceiling Act, 1976, and, in fact, in the overall partition of the ancestral properties, the said land was also included and it was allotted to Genu and Chhabu only. Out of 45 R land of Gat No.28/1, 24 R land was allotted to Genu and 21 R land was allotted to Chhabu, as is evidenced by a separate Agreement dated 9 June 1988.

3.4 The Defendants contend, Baban was of one the executants of the said agreement and Dattu Baban Dhankude, son of Baban, was also a consenting party thereto.

3.5 Respondent Nos.1 to 7 Plaintiff Nos.1 to 7 - instituted a suit with the assertion that the suit properties are the ancestral properties, there has not been a partition by metes and bounds, the purported agreement dated 9 June 1988 is not legal and valid and does not bind the Plaintiffs, nor does it confer any title to the property described in paragraph 1a of the plaint on the descendants of Genu and Chhabu. Yet, taking undue advantage of the wrongful mutation of the names of the descendants of Chhabu and Genu, the descendants of Chhabu have unauthorizedly sold 21 R land to Defendant No.7 under the Sale Deed dated 21 May 2008. The said Sale Deed is null and void and does not bind the Plaintiffs. The Plaintiffs thus, claim 9/96th share each in the suit property described in paragraph 1a of the plaint and ownership over an area admeasuring 2.29 R of the property described in paragraph 1b of the plaint.

3.6 In the said suit, the Plaintiffs prayed for temporary injunction to restrain the Defendants from entering on, carrying out construction or development activities and alienating or otherwise creating third party interest in the suit property. By an order dated 11 August 2023, the learned Civil Judge, Sr. Division, Pune, rejected the said application.

3.7 Being aggrieved, the Plaintiffs preferred appeal before the learned District Judge, Pune. By an order dated 29 January 2024, the learned District Judge was persuaded to allow Interim Application (Exhibit 5)

preferred in the said appeal and direct the parties to maintain status quo in nature and status in respect of suit property No.28/1 till the final decision of the appeal.

4. The Petitioners/original Defendant Nos.1A to 2T assailed the said order in WP No.5219 of 2024. This Court directed the Appeal Court to decide the appeal in a time bound manner.

5. Eventually, the learned District Judge by the judgment and order dated 10 May 2024, partly allowed the appeal by setting aside the order passed by the trial Court to the extent of Survey No.28/1 and restrained the Defendants from alienating and changing the nature of the suit property Nos.28/1 or creating third party interest therein till the final disposal of the Special Civil Suit No.1460 of 2018. The said judgment and order came to be assailed in WP No.8628 of 2024.

6. I have heard Mr. Sakhare, learned Senior Advocate for the Petitioners, and Mr. Godbole, learned Senior Advocate for the Respondent Nos.1 to 8, at some length. With the assistance of the learned Counsel for the parties, I have perused the material on record, including the orders passed by the trial Court and the learned District Judge.

7. Mr. Sakhare, learned Senior Advocate for the Petitioners, submitted that the learned District Judge committed a manifest error in law in interfering with a well reasoned order passed by the trial Court in exercise of

discretionary jurisdiction. The appeal Court did not adhere to the limits of jurisdiction in the matter of interference with the discretionary order. By no stretch of imagination, according to Mr. Sakhare, can it be said that the view of the trial Court was either perverse or the one which could not have at all been taken, in the facts and circumstances of the case.

8. Mr. Sakhare would urge, the aspect of prima facie case was completely mis-appreciated by the learned District Judge. For years together, the names of the descendants of Chhabu and Genu stood mutated to the record of right of the suit properties. The Plaintiffs had unsuccessfully challenged those mutations. In that view of the matter, when the Plaintiffs approached the Court after 30 years of the agreement under which the suit property was allotted to the share of Chhabu and Genu, the learned District Judge could not have based his findings on the principle of possession follows title, urged Mr. Sakhare.

9. The learned District Judge was not in law entitled to substitute his view for the plausible view taken by the trial court after considering the entire gamut of the circumstances. Mr. Sakhare further submitted that the impugned order also deserves to be interfered with for the utter dis-regard to the principle of balance of convenience. The material on record indicates that the suit was instituted in the year 2018. No injunction was in operation till the order of status quo was passed by the appeal Court on 29 January 2024. In

the intervening period, the Petitioners had obtained necessary permissions and development work had commenced. Reliance was placed by Mr. Sakhare on the permissions for excavation at the suit premises, granted by the concerned authorities, and the photographs which show the development at site. In this backdrop, the fact that the Plaintiffs were claiming only 9/96th share in the suit properties ought to have been taken into account while appreciating the relative balance of convenience.

10. Mr. Sakhare further urged that, in any event, this Court can balance the equities by securing the interest of both the parties. Restraining Defendants completely, when the Petitioners have invested huge amount, would certainly cause irreparable loss to the Petitioners.

11. Per contra, Mr. Godbole, learned Senior Advocate for Respondent Nos.1 to 8, supported the impugned judgment. It was urged that the learned District Judge rightly exercised the jurisdiction to correct the error in the exercise of discretion by the trial Court. The contesting Defendants were precluded from asserting that Chhabu and Genu had acquired exclusive ownership over Survey No.28/1 on the strength of the purported agreement dated 9 June 1988 on account of the judicial determinations which attained finality. The trial Court had unjustifiably ignored the said fact.

12. Mr. Godbole invited attention of the Court to the judgments in Suit Nos.728 of 2006 and 729 of 2006 dated 7 September 2010, whereby the suits

instituted by the descendants of Chhabu and Genu, on the strength of the very same agreement dated 9 June 1988, were dismissed recording a categorical finding that the Plaintiffs therein failed to establish that there was partition of the ancestral properties between Baban, Chhabu and Genu on 9 June 1988. In the face of these binding judgments, the mutation entries which were made for fiscal purposes could not have been looked into.

13. To begin with, it is necessary to note that before the appeal Court, the Appellants-Petitioners not pressed the appeal in respect of Survey No.21 Hissa No.3 (suit property described in para 1b of the plaint). The appeal was also not pressed against Defendant Nos.3a to 3e, 4a to 4h, 5, 5b, 5d to 5f, 6 to 6b qua the suit property bearing No.28/1. Learned District Judge, thus, partly allowed the appeal to the extent of Survey No.28/1 (the suit property described in para 1a of the plaint) in terms of prayer clause (c) of the application for temporary injunction.

14. It is also necessary to note that, the final order having been passed in Appeal No.292 of 2023 which has been assailed in WP No.8628 of 2024, the decision therein would seal the fate of WP No.5219 of 2024 which was preferred against an order granting status quo during the pendency of the said appeal.

15. The thrust of the submissions of Mr. Sakhare, learned Senior Advocate for the Petitioners, was that the learned District Judge could not have

interfered with the discretionary order passed by the trial Court. Learned District Judge, according to Mr. Sakhare, transgressed the jurisdictional limits in an appeal against the discretionary order.

16. 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.

17. 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

1 1990 (supp) SCC 727

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 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)

18. 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

² (1960) 3 SCR 713

³ (2006) 5 SCC 282

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 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)

19. 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."

(emphasis supplied)

20. In the light of the aforesaid position in law, it has to be seen whether the

⁴ (2010) 2 SCC 142

learned District Judge was justified in interfering with the order passed by the trial Court, whereby injunction was refused. From the perusal of the order passed by the trial Court, it becomes evident that the fact that there were mutation entries in the names of the Defendants, significantly weighed with the trial Court. Learned Civil Judge was also of the view that even if it was assumed that the family arrangement dated 9 June 1988, which constituted the sheet-anchor of the defence of the descendants of Genu and Chhabu, was sham and bogus, only the father of the Plaintiffs could have challenged the same and no one else. Since the legality and validity of the said agreement was not questioned during the lifetime of the father of the Plaintiffs and the challenge to the mutation entries did not succeed, the learned Civil Judge was persuaded to return a finding that the Plaintiffs failed to make out a prima facie case.

21. The learned District Judge found the aforesaid approach of the trial Court unsustainable in the face of the judgments delivered in the suits instituted by the descendants of Chhabu and Genu seeking reliefs on the strength of the aforesaid agreement dated 9 June 1988. A perusal of the judgments in Special Civil Suit Nos.729 of 2006 and 728 of 2006 which were instituted by the descendants of Genu and Chhabu, respectively, makes it crystal clear that the said suits were instituted on the premise that under the said agreement dated 9 June 1988, purportedly executed by and between

Genu and Chhabu, the predecessor in title of the Plaintiffs, the subject property was allotted to and partitioned between Chhabu and Genu only. The trial Court had framed specific issues; whether there was a partition in respect of the subject property 1a under the said agreement dated 9 June 1988, and, whether the Plaintiffs therein proved their title and possession over the suit property 1a. Both the issues were answered in the negative.

22. It is necessary to note that the learned Civil Judge had returned a finding that the said agreement was not proved. It was, inter alia, noted that the said agreement was not signed by Baban, the predecessor in title of the Plaintiffs, nor it could be proved that Dattoba Dhankude had signed the said agreement as the constituted attorney of Baban. Resultantly, it cannot be said that under the said agreement, the suit property 1a was partitioned amongst Genu, Chhabu and Baban and it was allotted to the share Chhabu and Genu only.

23. Incontrovertibly, the judgments in Special Civil Suit Nos.728 and 729 of 2006 attained finality. In the backdrop of the aforesaid decisions in former suits, the learned District Judge was persuaded to hold that the claim of the descendants of Genu and Chhabu has been negated by judicial determination and the said orders have not been challenged. Thus, the reliance on the mutation entries to bolster up the case of the Defendants of acquisition of exclusive title over the portions of the suit property 1a was not

sustainable. Learned District Judge has also adverted to the apparent discrepancy in the two documents purported to be the Agreement for Partition dated 9 June 1988.

24. The aforesaid approach of the learned District Judge, in my considered view, cannot be faulted at. The trial Court had not dealt with the consequences which emanated from the judgments passed in RCS Nos.728 and 729 of 2006 on the rights and obligations of the descendants of Chhabu and Genu, who had propounded the said Agreement dated 9 June, 1988 which constitutes the substratum of the defence of the contesting Defendants. A specific issue about the partition of the suit lands 1a under the said agreement, was raised and answered against the descendants of Chhabu and Genu. The learned Civil Judge, thus, could not have legitimately ignored the binding efficacy of the said judgments on the descendants of Genu and Chhabu.

25. *Pria facie*, the said judgments operate as *res-judicata*, or, in the least, on the principles analogous to *res-judicata* bar the defence based on the said Agreement dated 9 June 1988. Refusal to take into account the consequences that emanated from the said judgments was thus a manifest error, which warranted correction by the appeal Court in the exercise of appellate jurisdiction. Learned District Judge was, therefore, within his rights in interfering with the order passed by the Trial Court declining to grant

injunction when the character of the suit property and the entitlement of the Plaintiffs to an interest therein, was prima facie made out and the claim of exclusive title of the descendants of Chhabu and Genu over the suit property was negated by a prior judicial determination.

26. On the aspect of balance of convenience, the submissions of Mr. Sakhare that the Defendants have commenced development of the suit property 1a by obtaining necessary permissions, including a permission to excavate minor minerals, does not advance the cause of the submission on behalf of the Petitioners.

27. From the perusal of the material on record, especially the permission to excavate minor minerals and the photographs of the suit property, it prima facie emerges that the said development had fairly recent origin. The development is at a very nascent stage. In view of a very strong prima facie case in favour of the Plaintiffs, and negation of the exclusive entitlement of the Defendants over the suit property 1a, the balance of convenience, if properly construed, tilts in favour of the Plaintiffs. The development of the suit property, in these circumstances, would cause irretrievable prejudice to the Plaintiffs and they would be presented with a *fait accompli*. Therefore, I am unable to persuade myself to agree with the submissions of Mr. Sakhare that the learned District Judge did not properly evaluate the element of balance of convenience.

28. On the aspect of irreparable loss, as noted above, refusal to grant injunction, in the circumstances of the case, will impair the rights of the Plaintiffs irretrievably.

29. The upshot of aforesaid consideration is that, on balance, the learned District Judge justifiably exercised the jurisdiction to correct the error committed by the trial Court in the exercise of discretion. This Court in exercise of its limited supervisory jurisdiction does not find any justifiable reason to interfere with the judgment and order passed by the learned District Judge in MCA No.292 of 2023.

30. Resultantly, both the Writ Petitions deserve to be dismissed.

31. Since the suit has been instituted in the year 2018, it may be expedient to request the learned Trial Court to hear and decide the suit as expeditiously as possible.

32. Hence, the following order :

ORDER

(i) The Writ Petitions stand dismissed.

(ii) Rule discharged.

(iii) Learned Civil Judge seized with Special Civil Suit No.1560 of 2018 is requested to make an endeavour to hear and decide the said suit as expeditiously as possible.

(N.J.JAMADAR, J.)