

(2022) 01 GUJ CK 0022

In the Gujarat High Court

Case No : R/Special Civil Application No. 17430 Of 2021

Chandrakant Shankarrav Kulkarni

APPELLANT

Vs

Patel Babubhai Narayanbhai

RESPONDENT

Date of Decision : 13-01-2022

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Code Of Civil Procedure, 1908 — Section 115

Citation : (2022) 01 GUJ CK 0022

Hon'ble Judges : Dr.Ashokkumar C. Joshi, J

Bench : Single Bench

Advocate : NK Majmudar

Final Decision : ?Dismissed

Judgement

Dr. Ashokkumar C. Joshi, J

1. The substantive prayer which is made in this petition under Articles 226 and 227 of the Constitution of India, filed at the instance of the petitioner

â?" original plaintiff, is as follows:

â??7(ii) to pass appropriate order and be pleased to quash and set aside the order dated 15/6/2019 passed in Regular Civil Suit No. 9 of

2018 passed by the Ld. Principal Senior Civil Judge, Dabhoi as well as order dated 17/2/2021 passed by 8th Additional District Judge,

Dabhoi passed in MCA/3/2020 (New No./ MCA/27/2019- Old Number) and allow the application preferred by the Petitioners Below Exh. 5

and thereby, be pleased to restrain the opponents their agents from selling/ alienating/ transferring the subject matter property in favour of

3rd party and be pleased to direct the parties to maintain status quo qua the subject matter property.â??

2. Heard, learned advocate Mr. Maulik Soni for learned advocate Mr. N. K. Majmudar for the petitioner â?" original plaintiff.

2.1 The learned advocate for the petitioner submitted that both the learned Courts below have committed error in rejecting the injunction application

Exh. 5 preferred by the petitioner â?" plaintiff. He submitted that the learned Courts below have committed an error in interpreting the provisions of

the Bombay Prevention of Fragmentation and Consolidation of Holdings Act and thereby, have erred in coming to the conclusion that the disputed land

is fragmented land. The learned advocate for the petitioner further submitted that the learned Courts below have failed to appreciate the documents at

Mark 4/3 to 4/10 and the Mutation Entry No. 1337 by which, the name of the petitioner â?" plaintiff was ordered to be mutated in revenue entries. It is

further submitted that the subject land is being cultivated by the petitioner â?" plaintiff since last more than 22 years and accordingly, the learned trial

Court ought to have exercised discretion and granted interim injunction. Making above submissions, he prayed that interference is required at the hands

of this Court by allowing this writ petition.

3. Regard being had to the submissions made and considering the material available on record, it appears that the petitioner has filed a Regular Civil

Suit No. 7 of 2018 before the Court of learned Principal Senior Civil Judge, Dabhoi for specific performance of the contract, declaration and

permanent injunction in which, he had filed an application Exh. 5 for temporary injunction under O.39 Rs.1 and 2 of the Civil Procedure Code, 1908

(herein after referred to as â?"the Codeâ?). The said application came to be dismissed by the learned trial Court vide order dated 15.06.2019 against

which, the petitioner - plaintiff filed an appeal being Misc. Civil Appeal No. 3 of 2020 (Old No. 27 of 2019) before the learned 8th Additional District

Judge, Dabhoi, which also came to be dismissed vide order dated 17.02.2021. It is against these concurrent findings of two learned Courts below,

present petition is filed by the petitioner with aforesaid prayer. It may be noted that in support of his case, the petitioner â?" plaintiff has relied upon

documents at Mark 4/3 to 4/10 and impress upon that the by virtue of Mutation Entry No. 1337, name of the petitioner â?" plaintiff was ordered to be

mutated in the revenue record by the order of the Mamlatdar, Dabhoi. However, if the observations made by the learned trial Judge in the impugned

order are perused, the learned trial Judge has opined that, only because the name of the plaintiff is inserted in the revenue record, is in itself does not create any right in favour of the plaintiff?" petitioner. The mutation entry is for the fiscal purpose only. The learned trial Judge has also observed that, the plaintiff has filed the suit after a much delay and also after the withdrawal of previous suit unconditionally as stated by him in respect of the fragment of the land, which is not permissible under law to be transferred as discussed therein. The said view of the learned trial Court has been affirmed by the learned first appellate Court. It may be noted that the orders in question are passed on an application for interim injunction Exh. 5 and the suit is pending before the competent Civil Court at Dabhoi. At the stage of such interim injunction application, the Court has to consider three aspects only viz. prima facie case, balance of convenience and irreparable loss, which as per the learned Courts below, the petitioner?" plaintiff has failed to make out and in the facts and circumstances of the case, this Court also concur with the said findings of the learned Courts below.

3.1 At this juncture, it would not be out of place here to refer to the decision of the Apex Court in *Shalini Shyam Shetty and Another Vs. Rajendra*

Shankar Patil, (2010) 8 SCC 329, wherein the Apex Court has considered in detail the Scope of interference by this Court that, Article 227 can be

invoked by the High Court Suo motu as a custodian of justice. An improper and a frequent exercise of this power would be counterproductive and will

divest this extraordinary power of its strength and vitality. The power is discretionary and has to be exercised very sparingly on equitable principle.

The observations of the Apex Court read as under:

Articles 226 and 227 stand on substantially different footing. As noted above, prior to the Constitution, the Chartered High Courts as also the

Judicial Committee of the Privy Council could issue prerogative writs in exercise of their original jurisdiction. [See 1986 (suppl.) SCC 401 at page 469)].

58. However, after the Constitution every High Court has been conferred with the power to issue writs under Article 226 and these are original

proceeding. [*State of U.P . and others vs. Dr. Vijay Anand Mahara j* - AIR 1963 SC 946, page 951].

59. The jurisdiction under Article 227 on the other hand is not original nor is it

appellate. This jurisdiction of superintendence under Article 227 is for both administrative and judicial superintendence. Therefore, the powers conferred under Articles 226 and 227 are separate and distinct and operate in different fields.

60. Another distinction between these two jurisdictions is that under Article 226, High Court normally annuls or quashes an order or proceeding but in exercise of its jurisdiction under Article 227, the High Court, apart from annulling the proceeding, can also substitute the impugned order by the order which the inferior tribunal should have made. {See Surya Dev Rai (supra), para 25 page 690 and also the decision of the Constitution Bench of this Court in Hari Vishnu Kamath vs. Ahmad Ishaque and others - [AIR 1955 SC 233, para 20 page 243]}.

61. Jurisdiction under Article 226 normally is exercised where a party is affected but power under Article 227 can be exercised by the High Court suo motu as a custodian of justice. In fact, the power under Article 226 is exercised in favour of persons or citizens for vindication of their fundamental rights or other statutory rights. Jurisdiction under Article 227 is exercised by the High Court for vindication of its position as the highest judicial authority in the State. In certain cases where there is infringement of fundamental right, the relief under Article 226 of the Constitution can be claimed ex-debito justitia or as a matter of right. But in cases where the High Court exercises its jurisdiction under Article 227, such exercise is entirely discretionary and no person can claim it as a matter of right. From an order of a Single Judge passed under Article 226, a Letters Patent Appeal or an intra Court Appeal is maintainable. But no such appeal is maintainable from an order passed by a Single Judge of a High Court in exercise of power under Article 227. In almost all High Courts, rules have been framed for regulating the exercise of jurisdiction under Article 226. No such rule appears to have been framed for exercise of High Court's power under Article 227 possibly to keep such exercise entirely in the domain of the discretion of High Court.

62. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:

(a) A petition under Article 226 of the Constitution is different from a petition

under Article 227. The mode of exercise of power by High Court under these two Articles is also different.

(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of Superintendence on the High Courts under Article 227 and have been discussed above.

(c) High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or Courts inferior to it. Nor can it, in exercise of this power, act as a Court of appeal over the orders of Court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.

(d) The parameters of interference by High Courts in exercise of its power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in *Waryam Singh* (supra) and the principles in *Waryam Singh* (supra) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in *Waryam Singh* (supra), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and Courts subordinate to it, 'within the bounds of their authority'.

(f) In order to ensure that law is followed by such tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than

the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

(i) High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of

the Constitution by the Constitution Bench of this Court in the case of L.Chandra Kumar vs. Union of India & others, reported in (1997) 3 SCC 261

and therefore abridgement by a Constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code

(Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered

that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this Article is

to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of

justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that

the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the

functioning of the tribunals and Courts subordinate to High Court.

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed

for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual

grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

(o) An improper and a frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and vitality.

3.2 Thus, exercise of power under Article 227 of the Constitution of India should

be with a view to keep the tribunals / Courts within the bounds of their authority, to ensure that law is followed by tribunals / Courts by exercising jurisdiction which is vested in them and/or when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted. In exercise of its power of superintendence, High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

3.3 In view of the aforesaid vis-a-vis the concurrent findings of the two learned Courts below, this Court find no illegality, perversity and/or arbitrariness which requires interference at the hand of this Court. This petition, therefore fails and is dismissed accordingly, in limine. No order as to costs.

3.4 It is made clear that the learned trial Court shall proceed with the suit in accordance with law, without being influenced by order of this Court.