

(2022) 03 GUJ CK 0001

In the Gujarat High Court

Case No : R/Special Civil Application No. 15621 Of 2021

Jignashaben D/O Madhuben Alias Mrudulaben Suryakant
Desai

APPELLANT

Vs

LH Of Decd Vardhmankumar Alias Deepakbhai Kantilal Shah

RESPONDENT

Date of Decision : 04-03-2022

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Code Of Civil Procedure, 1908 — Section 115

Bombay Land Revenue Code, 1879 — Section 135(D)

Citation : (2022) 03 GUJ CK 0001

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

Bench : Single Bench

Advocate : Digant M Popat

Final Decision : ?Dismissed

Judgement

Dr. Justice Ashokkumar C. Joshi, J

1. This petition, inter alia, under Article 227 of the Constitution of India has been filed by the petitioners praying for to quash and set aside the impugned order dated 06.02.2021 passed by the learned 2nd Additional District Judge, Kalol District: Gandhinagar below application Exh. 5 in Regular Civil Appeal No. 20 of 2021. By the said application Exh., 5, the petitioners – appellants had prayed for to grant status quo qua the suit property pending the aforesaid appeal which is filed against the judgment and order dated 18.03.2020 passed by the learned Principal Senior Civil Judge, Kalol, District: Gandhinagar, dismissing the Special Civil Suit No. 48 of 2015 (Old Regular Civil Suit No. 180 of 2010), which was filed by the petitioners – plaintiffs for declaration and permanent injunction.

2. Brief facts of the case on hand are that deceased original plaintiff namely Madhuben @ Mrudulaben is the legal heir of deceased Kantilal Chhotalal Shah. That her deceased father had certain properties having joint rights of the parties, situated at Village: Vayana, Taluka: Kalol, District: Gandhinagar, numbered as old

Survey Nos. 482/2, 42/1, 83, 86, 616, 627, 138/A, 195, 206/1, 418/3, 622, 501/2 and 620/B, which are newly given block numbers as Block Nos. 40, 59, 752, 767, 160, 618, 243, 487, 756, 609, 213 and 755 (hereinafter referred to as the 'disputed properties'). As per the deceased plaintiff, she and defendant Nos. 1 to 6 are the co-owners of disputed properties having equal undivided share. It is stated by the plaintiff that their common ancestor deceased Kantilal Chhotalal Shah's name was there in the revenue record and after his death, her name and names of ancestor original defendant No. 2 to 4 namely deceased Vimalkumar Kantilal Shah and the name of defendant Nos. 1, 5 and 6 were inserted by inheritance entry into the revenue record. It is further the case of the plaintiff that there was consolidation of survey numbers and as per entry No. 14, survey numbers were consolidated into the block numbers. It is stated that the defendant Nos. 5 and 6 waived their right of share and mutation Entry No. 1048 was effected. It is the say of the plaintiff that she was adult at the time of Entry No. 1048 but her consent and/or signature was not obtained prior to deletion of her name from the revenue record and that, she has not waived her right in favour of defendants. It is stated that the plaintiff was equally entitled for the share with defendant Nos. 5 and 6, her name was entered through Entry No. 1334 against which her nephew filed objections and the dispute case No. 276/7 was arisen before Mamlatdar, Kalol. It is further the case of the plaintiff that Mamlatdar, Kalol passed an order on 31.01.2008 rejecting the Entry No. 1334 against which, she filed RTS Appeal No. 77/08 before the Prant Officer. The plaintiff filed RTS Appeal No. 37/09 challenging the Entry No. 1048 before the Prant Officer, Gandhinagar. She issued Public Notice in the 'Sandesh' daily on 26.12.2007 for declaration of her right as co-sharer. It is further the case of the plaintiff that the defendant Nos. 1 to 4 executed a registered Sale Deed No. 6253 for Block No. 213 in favour of Mukeshbhai Mohanbhai Patel, the defendant No.

9 and Mutation Entry No. 1828 was effected. It is further stated that the plaintiff also filed her objections against Entry No. 1673 which was effected in respect of Block No. 755. It is stated that the defendant Nos. 1 to 4 have, without her consent and signature, falsely executed the sale deed in favour of Mehta Mahendrakumar Popatlal, the defendant No. 7 for Block Nos. 753 and 59 and hence, she filed the suit in question, which was decreed against her against which, appeal is filed in which, an application Exh. 5 praying status quo was preferred, which came to be rejected vide impugned order dated 06.02.2021 and hence this petition.

3. Heard, Mr. Digant Popat, learned advocate for the petitioners. The learned advocate for the petitioners, with all vehemence at his command, submitted that the impugned order was bad, illegal, perverse and contrary to the facts and evidence on record inasmuch as though all the three ingredient for granting interim injunction viz. prima facie case, balance of convenience and irreparable loss are in favour of the petitioners, the learned first appellate Judge has committed a grave error in rejecting the said application. The learned advocate for the petitioners submitted that it is clear from the order of the revenue

authorities that there was no signature of the plaintiff for relinquishing her right in the suit property and though such finding of the revenue authorities is not overruled, the learned appellate Judge failed to take into consideration such an important aspect of the matter. He submitted that the learned first appellate has failed to take into consideration the settled law on the revenue entries to the effect that the same are meant for the fiscal purpose only and no legal rights can be determined on the basis of the mutation entry.

3.1 The learned advocate for the petitioners further submitted that despite lis pendens is registered, several sale deeds have been executed by the respondent Nos. 1 to 6 which shows the mala fide intention of the respondents.

3.2 The learned advocate further submitted that the order passed by the learned first appellate Judge is non-speaking one and without application of mind.

3.3 Thus, making above submissions, it is urged that interference at the hands of this Court is required in the present petition and requested to allow the petition as also to grant the interim injunction.

3.4 In support, the learned advocate for the petitioners has relied upon a decision of the Coordinate Bench of this Court, rendered in the case of Roshanben Hajibhai Deraiya W/o. Ganibhai Sorathiya v. State of Gujarat on 09.07.2021 in Special Civil Application No. 10065 of 2020.

4. Regard being had to the submissions made and considering the material available on record vis-a-vis the judgment and order upon which, the learned advocate for the petitioners has placed reliance, firstly, it would be apt to note here that this petition is filed under Article 227 of the Constitution of India. Apex Court, in *Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil*, (2010) 8 SCC 329, has considered in detail the scope of interference by this Court to hold and observe 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 Hon'ble Supreme Court, read as under:

"57. 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.”

4.1 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.

4.2 Nonetheless, if the observations made by the learned first appellate Judge are perused, it is observed by the learned first appellate Judge in paragraph (3) of the impugned order below Exh. 5 that, disputed entry No. 1048 is of 1987, to be precise dated 29.09.1987, whereas, the appellant has filed the suit being Special Civil Suit No. 48/2015 (Old Regular Civil Suit No. 180/2010 on 12.07.2010 and thus, the appellant has challenged the said entry after almost 23 years. It is further observed that, the appellant has not challenged an entry dated 15.03.1982, which is made prior to the aforesaid disputed entry and that, the names of the daughters of Kantilal Chhotalal Shah namely Kokilaben, Madhuben and Arunaben have been cancelled from the suit properties by their consent. Further, in the last column, there is a reference qua service of Notice under Section 135(D) and that entry is certified on 29.09.1987. That, before the Talati cum Mantri, statements of Kokilaben and Arunaben have been recorded, copies whereof, have been produced by the plaintiffs in the suit, which is related to the Entry No. 1048, which is admitted vide Exh. 292. In the application given by Kokilaben and Arunaben, Kokilaben has informed on behalf of Madhuben and thereafter, the statements of Kokilaben and Arunaben have been recorded and Kokilaben has signed on behalf of Madhuben, plaintiff herein. In the said statement, it is specifically averred that all the three sisters have relinquished

their right in the suit properties in favour of their brothers namely Vimalkumar and Vardhmankumar. Further, there is a reference with regard to service of Notice under Section 135(D) of the Bombay Land Revenue Code. Thus, whatever facts stated by the appellant are not acceptable. Further, the purchaser of the suit properties has stated that he is the bona fide purchaser of the suit properties by way of a sale deed and has paid the sale consideration in full and hence, it is requested that injunction may not be granted. The appellant has filed the suit after lapse of many years and thence, on the ground of delay and laches also, the injunction may not be granted. Besides, no criminal proceedings have been initiated to show that the aforesaid signs are forged and bogus nor any objections have been taken qua such forged signatures. Last but not the least, after taking into the consideration all the aspects of the matter, the learned first appellate Judge has come to the conclusion that the appellant has failed to prove the prima facie case and thereby, rejected the application Exh. 5 for interim injunction.

4.3 Thus, indisputably, the Entry in question is challenged after a period of almost 23 years; further for a proposition that the signatures are forged and fabricated, no proceedings appears to have been initiated and in the circumstances, when the learned first appellate Judge has come to the conclusion that no prima facie case is made out, in the considered opinion of this Court, no error, much less an error apparent, has been committed by the learned first appellate Judge, which requires interference at the hands of this Court. At this juncture, it would be apt to note that the learned trial Court, while deciding the suit, while answering the Issue No. 4 as to whether the suit is barred by limitation, has answered the same in affirmative.

4.4 The learned advocate for the petitioners has relied upon a decision of the Coordinate Bench as referred to herein above. The same would however, would be of no avail to the petitioners inasmuch as in the said case, the Court has come to the conclusion that the delay cannot be said inordinate one for the reason that the entry which was certified on 19.10.2016, came to be challenged on 30.12.2016, whereas, in the case on hand, indisputably, the entry of 1987 has been challenged in the year 2010 i.e. almost after 23 years, which can be said to be inordinate one.

5. In the backdrop as aforesaid, this petition fails and is dismissed accordingly in limine.