

(2022) 11 J&K CK 0008
In the Jammu And Kashmir High Court
Case No : Civil Miscellaneous No. 189 Of 2022

Shabir Ahmad Ganai

APPELLANT

Vs

Ghulam Mohi Ud Din Wani

RESPONDENT

Date of Decision : 04-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Code Of Criminal Procedure, 1973 — Section 156(3)

Citation : (2022) 11 J&K CK 0008

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : N. A. Kuchai, F. A. Wani

Final Decision : Dismissed

Judgement

Sanjay Dhar, J

1) The petitioner has invoked jurisdiction of this Court under Article 227 of the Constitution of India for setting aside order dated 24.05.2017 passed by learned Principal District Judge, Budgam, whereby, in a Miscellaneous Appeal filed against order dated 16.11.2015 of learned Munsiff, Chadoora, the petitioner has been temporarily restrained from causing any interference in possession of the respondent over the suit property.

2) It appears that the respondent herein (hereinafter referred to as the plaintiff) has filed a suit for permanent prohibitory injunction against the petitioner (hereinafter referred to as the defendant) before the Court of Munsiff, Chadoora. In the suit, the plaintiff has sought a permanent injunction restraining the defendant from interfering in possession of the plaintiff over the property comprising land measuring 04 marlas falling under Khasra No.33-min situated at Zangibagh B. K. Pora, Budgam and the construction raised thereon.

3) The case of the plaintiff before the trial court is that he is owner in possession of the suit property which he has purchased from its original owner, Shri Ghulam

Hassan Sofi, by virtue sale deed registered with the concerned Sub-Registrar on 08.10.2010 and that he has constructed a single storeyed house on the said land. It is alleged in the plaint that the defendant is pressurizing the plaintiff and trying to dispossess him from the suit property. According to the plaintiff, on 28.06.2015, the defendant along with his associates came to the suit property and tried to dispossess the plaintiff therefrom which compelled the plaintiff to file an application under Section 156(3) of the Cr. P. C. before the Court of Judicial Magistrate, 1st Class (Sub Judge), Chadoora

4) The defendant contested the suit by filing his written statement, wherein it is claimed that he has purchased the suit land from the plaintiff and his son and in this regard, payments have been made through cheques and cash to the son of the plaintiff. The defendant further claims that he has raised a structure on the suit land whereafter he sold the same to one Mtr. Gulshan Ara. It is further averred in the written statement that because the plaintiff's son was involved in certain criminal activities, as such, the sale deed could not be executed by the plaintiff in favour of the defendant. The defendant further claims that he has now purchased the suit property back from Mtr. Gulshan Ara and paid an amount of Rs.2.20,000/ to her out of the settled sale consideration of Rs.3,75,000/. It is claimed that the defendant is presently in actual physical possession of the suit property.

5) Along with the suit, plaintiff filed an application seeking temporary injunction against the defendant and the same was disposed of by the learned trial court vide its order dated 16.11.2015. The learned trial court while holding that there is a prima facie case in favour of the plaintiff and that the balance of convenience lies in favour of the plaintiff, observed that in case an order is not passed in favour of the plaintiff, he would suffer an irreparable loss. However, the learned trial court opined that on the basis of the material on record, it is not possible to determine the question of possession over the suit land and, as such, interim exparte order was modified and the parties were directed to maintain status quo with respect to the suit property.

6) The aforesaid order of the trial court came to be challenged by the plaintiff by way of a miscellaneous appeal before the Court of District Judge, Budgam. The learned District Judge, Budgam, modified the order of the learned trial court and restrained the defendant from interfering in possession of the plaintiff over the suit property. It was observed by the learned Appellate Court that once the learned trial court came to a conclusion that prima facie case and balance of convenience lies in favour of plaintiff and in case interim order is not passed in his favour, he is going to suffer an irreparable loss, it was not open to the trial court to pass an order of status quo simplicitor without rendering a tentative finding on the question of possession of suit property. It is this order of the Appellate Court which is under challenge before this Court in these proceedings.

7) The defendant/petitioner has challenged the impugned order on the grounds that the learned Appellate Court has exercised its jurisdiction illegally and with

material irregularity, inasmuch as the impugned order has given a licence to the plaintiff to dispossess the defendant from the suit property. It has been contended that the documents on record clearly show that the defendant is in possession of the suit property, as such, it was not open to the learned Appellate Court to modify the order passed by the learned trial court.

8) I have heard learned counsel for the parties and perused the material on record.

9) Before dealing with the contentions raised by the petitioner in the instant petition, it would be apt to examine the nature and scope of jurisdiction of this Court under Article 227 of the Constitution of India. Under the aforesaid Article, the High Court is vested with the supervisory power to ensure that all subordinate courts and Tribunals exercise their powers vested in them within the bounds of their authority. The nature and scope of power of the High Court under Article 227 of the Constitution has been a subject matter of discussion in several judgments of the Supreme Court. It would be apt to notice some of these judgments to have an idea about the nature and scope of the supervisory power of the High Court under Article 227.

10) The Supreme Court in the case of *Jai Singh and others vs. Municipal Corporation of Delhi and another*, (2010) 9 SCC 385, while considering the aforesaid aspect, has observed as under:

"15. We have anxiously considered the submissions of the learned counsel. Before we consider the factual and legal issues involved herein, we may notice certain well recognized principles governing the exercise of jurisdiction by the High Court under Article 227 of the Constitution of India. Undoubtedly the High Court, under this Article, has the jurisdiction to ensure that all subordinate courts as well as statutory or quasi judicial tribunals, exercise the powers vested in them, within the bounds of their authority. The High Court has the power and the jurisdiction to ensure that they act in accordance with well established principles of law. The High Court is vested with the powers of superintendence and/or judicial revision, even in matters where no revision or appeal lies to the High Court. The jurisdiction under this Article is, in some ways, wider than the power and jurisdiction under Article 226 of the Constitution of India. It is, however, well to remember the well known adage that greater the power, greater the care and caution in exercise thereof. The High Court is, therefore, expected to exercise such wide powers with great care, caution and circumspection. The exercise of jurisdiction must be within the well recognized constraints. It can not be exercised like a 'bull in a china shop', to correct all errors of judgment of a court, or tribunal, acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice. The High Court cannot lightly or liberally act as an appellate court and re-appreciate the evidence. Generally, it cannot substitute its own conclusions for the conclusions reached by the courts below or the statutory/quasi judicial

tribunals. The power to re-appreciate evidence would only be justified in rare and exceptional situations where grave injustice would be done unless the High Court interferes. The exercise of such discretionary power would depend on the peculiar facts of each case, with the sole objective of ensuring that there is no miscarriage of justice.

11) In a recent judgment in the case of *Garment Craft vs. Prakash Chand Goel*, (2022) 4 SCC 181, the Supreme Court while explaining the power of the High Court under Article 227 of the Constitution, relied upon its earlier judgment in the case of *Estralla Rubber vs. Dass Estate (Pvt) Ltd.* (2001) 8 SCC 97 and quoted with approval the following observations of the aforesaid judgment:

“6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to.”

12) From the foregoing analysis of law on the subject, it is clear that the High Court while exercising its powers under Article 227 of the Constitution has not to act as an appellate court and substitute its own judgment in place of the subordinate courts to correct an error. The High Court has to exercise its supervisory power with great care and caution and this jurisdiction can be exercised where there is any flagrant abuse of fundamental principles of law or justice and not otherwise. It is in the light of these principles that the instant case is required to be examined.

13) In the instant case, the plaintiff/respondent claims to be owner in possession of the suit property. He has placed on record copy of the registered sale deed by virtue of which he has purchased the property in question. The revenue record relating to the property in question reflects the name of the plaintiff as its owner in possession. As against this, the defendant/petitioner is relying upon the bank statements, according to which certain amounts have been transferred to the account of son of the plaintiff. Reliance is also being placed by petitioner/

defendant upon agreement to sell executed by him in favour of Mtr. Gulshan Ara as also another agreement to sell executed by Mtr. Gulshan Ara in faovur of the defendant in respect of the suit property. The plaintiff is not a party to either of these agreements.

14) Admittedly, the plaintiff is the recorded owner of the property in question. Simply, on the basis of the bank statement which shows certain payments having been made to the son of the plaintiff, it cannot even, prima facie, be stated that the plaintiff has sold the property to the defendant. The fact of the matter remains that the property belongs to the plaintiff and not to his son. So far as the two agreements to sell relied upon by the defendant are concerned, the same relate to a transaction to which plaintiff is not a party. Therefore, on the basis of documents, it cannot even, prima facie, be said that the plaintiff has either sold the property to the defendant or that he has delivered possession thereof to the defendant. The plea of the defendant that he has purchased the suit land from the plaintiff without execution of any document in this regard cannot be accepted because sale of an immovable property can only be made by a registered instrument. Thus, the learned Appellate Court has rightly observed that the material on record, prima facies, shows that the plaintiff happens to be the owner in possession of the suit property.

15) So far as the order passed by the learned trial court, whereby parties have been directed to maintain status quo, is concerned, the same is clearly not in accordance with law, inasmuch as the learned trial court has, without recording a tentative opinion as to the possession of the suit property, directed the parties to maintain status quo, that too after holding that there is a prima facie case in favour of the plaintiff and that balance of convenience lies in his favour.

16) It has become a routine for the trial courts to pass status quo orders without specifying as to which of the parties to the dispute is in possession of the suit property. Such orders tend to invite applications for initiation of contempt proceedings as also the applications for implementation of the court orders by the police. Without there being any opinion as regards the possession of the suit property, even the police finds it very difficult to implement such orders. This situation generally results in chaos and confusion. This Court has, in the case of Farid Ahmad vs. Liaqat Ali and others, SLJ 2000 86, deprecated such practice being adopted by the trial courts. While doing so, this Court has relied upon the following observations of the High Court of Madras in the case of D. Albert vs. Lalitah, AIR 1989 Madras 73:

"It is no doubt true that parties are well aware of the real state of things as they exist. But when they are fighting with each other, in a court of law, advancing cases diametrically opposed to each other, neither of them can be expected to meekly reconcile to the situation and stop interfering with the possession of the opposite party even if that is the real 'status quo'. Invariably, the immediate consequence is that the party who is not in possession would attempt to get into possession by asserting that he had been in possession already and on the date

of the 'status quo' order he was in possession with the result that there would be a clash between the parties leading to intervention by police and criminal proceedings. There is no justification whatever for a civil court driving the parties to criminal proceedings by passing an order of 'status quo' without indicating what the status quo is. This is nothing but a grave dereliction on the part of the civil Court of its duty to decide a disputed question of fact. The Court is bound to decide prima facie on the materials available, whether the plaintiff is in possession or the defendant is in possession. Leaving the matter in doubt and ambiguity by passing an order of 'status quo' will result in more dangerous consequences than even deciding wrongly but clearly that one of the parties is in possession."

".....Whenever a Court passes an order directing the preservation of 'status quo' it should by the same order state in unequivocal terms what the 'status quo' is. Otherwise the court will be failing to do its duty"

17) Thus, it is clear that while passing an interim order directing the parties to maintain status quo, the trial courts should in no uncertain terms record a tentative finding as to which of the parties is in possession of the disputed property. In the instant case, the learned trial court has miserably failed to render an opinion on this aspect of the matter despite there being over-whelming material on record on the basis of which the learned trial court could have come to a correct conclusion in this regard. The Appellate Court has, therefore, rightly modified the order of the learned trial court.

18) For the foregoing reasons, I do not find any error, much less a gross error, having been committed by the learned Appellate Court while passing the impugned order. The petition lacks merit and is dismissed accordingly.