
(2012) 12 GUJ CK 0085

In the Gujarat High Court

Case No : Special Civil Application No. 12345 of 2012

Shree Swaminarayan Gadi's Acharya

APPELLANT

Vs

Cosmos Development Corporation and Others

RESPONDENT

Date of Decision : 06-12-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1, Order 40 Rule 1(2)
Constitution of India, 1950 — Article 136, 226, 227

Citation : (2013) 2 GLR 1766

Hon'ble Judges : Anant S. Dave, J

Bench : Single Bench

Advocate : M.C. Bhatt and Vikram J. Thakore, for the Appellant; Vimal M. Patel, for the Respondent

Judgement

Anant S. Dave, J.—This petition under Arts. 226 and 227 of the Constitution of India is preferred by the petitioner with a prayer to quash and set aside the order dated 23-8-2012 passed by learned City Civil Court No. 16, Ahmedabad below Exh. 143 in Civil Suit No. 5882 of 1997 and to direct the receiver respondent No. 13 not to disturb possession of the petitioner over the suit land. The brief facts according to the petitioner for preferring this petition are as under:

1.1. That, on 23-12-1997 respondent No. 1 (original plaintiff) instituted Special Civil Suit No. 5882 of 1997 before City Civil Court, Ahmedabad and prayed for decree of specific performance of the agreement to sale dated 17-5-1980 and supplementary agreement dated 8-2-1990 alleged to have been executed by respondent Nos. 2 to 8 (original defendant Nos. 1 to 7) of land bearing Survey No. 609 of village Isanpur, District: Ahmedabad admeasuring 59894 sq.metre (suit land) against respondent Nos. 2 to 12. On 23-2-1998, learned City Civil Judge dismissed the notice of motion filed by respondent No. 1 against which respondent No. 1 preferred Appeal From Order Nos. 212 and 115 of 1998 before this Court wherein both the appeals were disposed of on 9-12-1998 with a direction to maintain status quo.

1.2. On 22-5-2000 original defendant Nos. 1 to 7 executed registered sale-deeds with 11 different Non-Trading Corporations, the purchaser of the suit lands. Thus, respondent No. 1 initiated contempt proceedings for the alleged breach of order dated 9-12-1998 and filing Misc. Civil Application No. 55 of 1999 before this Court and vide order dated 13-12-2000 this Court rejected the contempt petition. Thereafter respondent No. 1 preferred Special Leave Appeal No. 10402 of 2001 whereby the Apex Court restored the contempt petition with direction to hear the same after disposal of the suit.

1.3. On 19-10-2001, respondent No. 1 filed application Exh. 92 for appointment of receiver before the City Civil Court wherein reference of 99 shops and 11 sale-deeds executed by original owners in favour of different Non-Trading Corporation (N.T.C.) is made. The learned Auxiliary Chamber Judge, Court No. 13 allowed the application on 5-12-2001 by appointing receiver to take possession of the suit properties and observed various purchasers to be in possession of the suit property. The learned Judge further observed that it is neither possible to infer as to who was in actual possession of the suit property prior to filing of the suit nor to infer as to how various purchasers came into possession of the suit property. The receiver published a public notice on 7-1-2002 to take possession of the suit land including shops existing thereon. On issuing public notice, defendant No. 11 (Mahima Corporation) filed Appeal From Order No. 10 of 2002 with Civil Application No. 89 of 2002 on 21-1-2002, in which this Court passed interim order including order directing the receiver to take de-jure possession of the suit properties.

1.4. The learned Civil Judge, Court No. 12 allowed the application under Order VII, Rule 11-D filed by some of the defendants and dismissed the suit being Civil Suit No. 5882 of 1997 on 29-8-2002. Against the dismissal order, respondent No. 1 herein (original plaintiff) preferred First Appeal No. 1773 of 2001 where stay against the operation of order dated 29-8-2002 was granted by this Court on 11-9-2002 as per order passed in Civil Application No. 6232 of 2002.

1.5. The petitioner-trust without having knowledge of the above mentioned proceedings bona fide purchased land admeasuring 52140.03 sq.metres the suit land from 9 different N.T.C. out of 11 N.T.C. on 28-3-2006. Even petitioner's name is mutated in the revenue record and the said property is running in the name of the petitioner-trust.

1.6. Prior to above, on 9-12-2004 one Jigar Corporation filed Civil Suit No. 3057 of 2004 against the two trustees of the petitioner trust for permanent injunction and not to take alleged possession of the Jigar Corporation. In the proceeding of Civil Suit No. 3057 of 2004 panchnama dated 6-3-2005 was prepared in which possession of the petitioner was noticed.

1.7. Respondent No. 1 (original plaintiff) instituted Civil Suit No. 1713 of 2007 against the petitioner trust and prayed to declare the sale-deeds to be null and void and for permanent injunction restraining the defendants from transferring or

alienating to the third party and from entering into or making any construction on the suit property.

1.8. Appeal From Order No. 10 of 2002 preferred against the order dated 5-12-2001 of trial Court appointing receiver came to be dismissed for default on 28-2-2011 (Coram: Hon''ble Mr. Justice K. S. Jhaveri)

1.9. On 2-9-2011, First Appeal No. 1773 of 2002 was disposed of by this Court (Coram: Hon''ble Mr. Justice K. S. Jhaveri) quashing and setting aside the order dated 29-8-2002 passed by the learned trial Court an application under Order VII, Rule 11-D and remanded the matter to learned trial Court.

1.10. Respondent No. 1 submitted an application Exh. 138 on 15-3-2012 for appointing new Receiver as the earlier Receiver appointed vide order dated 5-12-2001, died and therefore, the Civil Judge appointed a new Court Commissioner on 12-4-2012. The Court Commissioner on 23-7-2012 submitted an application Exh. 141 before the Civil Court for providing police protection to get the vacant, peaceful and physical possession of the suit property and the learned Civil Judge allowed Exh. 141 on 27-7-2009.

1.11. Civil Suit No. 390 of 2012 was instituted on behalf of petitioner-trust in which notice of motion was moved which was rejected by learned Chamber Judge, Court No. 12 against which Appeal From Order No. 154 of 2012 was preferred by the plaintiff of Civil Suit No. 390 of 2012. On 7-8-2012 the petitioner-trust submitted objection Exh. 143 in Civil Suit No. 5882 of 1997 and the Receiver made an endorsement on the application Exh. 143 that he has to act as per order below Exh. 141. The learned Judge, Court No. 16 rejected the application Exh. 143 on 23-8-2012. Since the Civil Suit No. 390 of 2012 was filed by unauthorised person the petitioner-trust withdrew the appeal with a view to file fresh suit and the learned Judge (Coram: Hon''ble Mr. Justice M.D. Shah) passed order on 28-8-2012 in Appeal From Order No. 154 of 2012 permitting the appellant to withdraw the appeal and observed that if any withdrawal pursis is filed to withdraw the suit with liberty to file fresh suit then in that case the trial Court would pass appropriate order and the withdrawal pursis to withdraw Civil Suit No. 390 of 2012 was submitted before the learned trial Court and the learned Judge disposed of the suit in terms of order passed by this Court in Appeal From Order No. 154 of 2012.

1.12. In the above background of facts the present petition is filed against the order dated 23-8-2012 passed by the learned Judge, Court No. 16 below Exh. 143 in Civil Suit No. 5882 of 1997.

2. However, certain facts on the subject-matter prior to 1997 during pendency of various proceedings including five individual separate suits, orders passed therein and connected events according to respondent No. 1 are as under:

2.1. During the year 1992 to 1994 the respondents inter se against each other filed individual separate suits viz. Civil Suit No. 1971 of 1992, Civil Suit No. 1303

of 1992, Civil Suit No. 1705 of 1992, Civil Suit No. 641 of 1994 and Civil Suit No. 4728 of 1994 and Civil Suit No. 882 of 1997 with respective reliefs and panchnama was prepared in Civil Suit No. 1971 of 1992 stipulating the possession of the suit property is with respondent No. 1.

2.2. In the year 1997, respondent No. 1 instituted Civil Suit No. 5882 of 1997 for specific performance of agreement dated 17-5-1980 executed by deceased Mir Saheb Miya and supplementary agreement dated 8-2-1990 and other documents executed by respondent Nos. 2 to 8 wherein the Civil Court initially granted an order to maintain status quo of the suit property on the notice of motion taken out by respondent No. 1 in Civil Suit No. 5882 of 1997 and on 23-2-1998, Civil Court dismissed the notice of motion in Civil Suit No. 5882 of 1997.

2.3. This Court passed an order to maintain status quo in Appeal From Order Nos. 115 and 212 of 1998 which was confirmed and appeal was disposed of by an order dated 9-12-1998 and directed the trial Court to consolidate, hear and decide the Civil Suit No. 1303 of 1992, Civil Suit No. 1971 of 1992, Civil Suit No. 641 of 1994, Civil Suit No. 5882 of 1997 and Civil Suit No. 3697 of 1995 on merits and in accordance with law.

2.4. For breach of the order passed by the High Court in Appeal From Order No. 115 of 1998 respondent No. 1 filed Misc. Civil Application No. 500 of 1999 which came to be rejected on 13-12-2000. The said order was carried in Appeal before the Supreme Court wherein the Supreme Court vide order dated 26-7-2002 passed order in Civil Appeal No. 4342 of 2002 arising out of SLP No. 10462 of 2001 was set aside and the Contempt Petition was restored to file.

2.5. On 24-4-2001 notice of lis-pendens registered by the plaintiff before the Sub-Registrar, Ahmedabad, giving details of the order of status quo passed by the High Court.

2.6. On 25-9-2001 this Court passed an order in A.O. No. 527 of 1999 setting aside the order passed by the Civil Court below Exh. 64 refusing to appoint a Court receiver and permitted respondent No. 1 to file afresh application for appointment of receiver. Thereafter respondent No. 1 on October, 2001 filed an application Exh. 92 to appoint a Court Receiver conferring powers under Order 40 of Civil Procedure Code, 1908 (for short "C.P.C.") and to take possession of the suit property and the Civil Court allowed application Exh. 92 on 5-12-2001 and appointed the Court Receiver with a direction to take possession of the suit property along with other directions of police protection. Accordingly on 4-1-2001 by public notice in the newspaper "Sandesh" was published by the Court Receiver to hand over the possession of the shops and the property in question failing which the Court Receiver will take over the possession and another public notice was given on 9-1-2002 in the newspaper by the Court Receiver about the order passed by the Civil Court and also to handover the possession of the shop.

2.7. On 20-1-2002 this Court passed an order in Appeal From Order No. 10 of 2002 filed by Mahima Corporation, respondent No. 12 and stayed the directions

given in Paras 16(A), (B) and (C) of the order dated 5-12-2001 passed by the Civil Court and also passed an order to take de-jure possession of the suit property. On 27-1-2002 the Court Receiver submitted the report disclosing the fact that there are 80 to 90 shops and there are headstrong persons who interfered with the proceedings of the Court Receiver. On 26-7-2002, the Hon''ble Supreme Court passed an order whereby the order dated 13-12-2000 passed by the High Court rejecting Contempt Petition was set aside and the petition was restored to file.

2.8. On 28-3-2006 petitioner purchased some part of the land in the suit property from nine N.T.Cs. despite the fact that various public notices were issued by the Court Receiver and there being the order to maintain status quo and notice of lis-pendens registered before the Sub-Registrar.

2.9. On 16-6-2006 a public notice was given by the Court Receiver informing not to transfer or alienate the suit property and also informed not to enter into the premises as the High Court has directed to take the possession of the vacant land and de-jure possession of the shops, and thereafter, the Court Receiver informed Talati-cum-Mantri not to mutate any entries in respect of land bearing Survey No. 609 situated at Mouje : Isanpur.

2.10. On 1-8-2007 respondent No. 1 was constrained to institute Civil Suit No. 1713 of 2007 against the petitioner and others to set aside the sale-deeds as described in Para 29 of the plaint and for permanent injunction restraining the parties from creating third party rights. On 18-8-2009, the Court Receiver instituted Civil Suit No. 1877 of 2007 against Ahmedabad Municipal Corporation and got the possession restored pursuant to the order passed by the Civil Court on the notice of motion taken out by the Court Receiver in the Suit.

2.11. Appeal From Order No. 10 of 2002 filed by Mahima Corporation was dismissed for default on 28-2-2011.

2.12. The petitioner instituted Special Civil Suit No. 390 of 2012 praying for permanent injunction and to protect the possession against the respondent Nos. 2 to 8 and to restrain any person from interfering with the land bearing Survey No. 609 admeasuring 59784 sq.metres along with the suit notice of motion for temporary injunction was also filed. The said suit was filed suppressing the material facts which were within the knowledge of the petitioner and on 15-2-2012 petitioner also filed an application Exh. 131 in Special Civil Suit No. 5882 of 1997 inter alia praying to be joined as defendant No. 12 in the said suit and on 12-3-2012 the notice of motion filed by the petitioner in Special Civil Suit No. 390 of 2012 was dismissed by the Civil Court. Even Exh. 131 filed by the petitioner to join as a defendant was not pressed by the petitioner and the same was disposed of by the Civil Court on 15-3-2012.

2.13. On 12-4-2012 Exh. 138 application filed by respondent No. 1 to appoint another person as a Court Receiver was allowed by the Civil Court and direction was given to the Registrar to appoint a suitable lawyer as Court Receiver who in

turn would carry out the work as per the order passed below Exh. 92. The Court Receiver gave a public notice informing not to alienate or transfer the land as it is managed by the Court through the Court Receiver. The Court Receiver on 23-7-2012 filed an application Exh. 141 seeking police protection to take the possession of the property and for removing the Bharti Airtel Mobile Tower from the suit property. The said application Exh. 141 was allowed on 27-7-2012 and with a view to preserve the suit property directed the receiver to remove the illegal encroachment under police protection. On 7-8-2012 petitioner filed application Exh. 143 in Civil Suit No. 5882 of 1997 for raising objection against the act of the receiver on the ground that the petitioners are holding possession through the sale-deed executed in the year 2007. But Exh. 143 filed by the petitioner was rejected by the Civil Court on 23-8-2012 is impugned in this petition.

2.14. The Appeal From Order No. 154 of 2012 filed by the petitioner against the order dated 12-3-2012 passed by the Civil Court dismissing notice of motion in Special Civil Suit No. 390 of 2012 was withdrawn by the petitioner on 28-8-2012 with an observation that the petitioner will withdraw the suit with a liberty to file a fresh suit. Thus, on 1-9-2012 Civil Suit No. 390 of 2012 was withdrawn by the petitioner and the petitioner could not seek any orders from the competent Court.

2.15. According to respondent No. 1/original plaintiff the above facts would reveal that the petitioner has suppressed not only vital and relevant facts but also undertaken an exercise of misusing and abusing the process of law by filing suit, injunction applications, Appeal From Orders and withdrawn at convenience and on this ground alone the petition deserves to be rejected.

3. However, Mr. M.C. Bhatt, learned Advocate for the petitioner would contend that, the learned Civil Judge rejected the objection raised by the petitioner as objector on the ground that the applicant/objector is not a party before the Court ignoring the law on Order 40, Rule 1 of C.P.C. It is submitted that observations made by learned Judge by placing reliance on the order passed below notice of motion on 12-3-2012 by the Co-ordinate Court of City Civil, Ahmedabad have no bearing inasmuch as the above order was challenged by filing Appeal From Order No. 154 of 2012 and upon a request made by the appellant to withdraw the suit filed by unauthorised person was accepted by this Court as reflected in the order dated 28-8-2012, and therefore, the decision based on such observations rejecting the application of the petitioner in the proceedings of Civil Suit No. 390 of 2012 is illegal. In continuation it is submitted that the conclusion of learned Judge about awareness of the petitioner of proceedings pending before Civil Court and the High Court of Gujarat and order of status-quo in operation and applying principles laid down in the case of Vijay J. Gadhvi Vs. State of Gujarat and Others, about positive falsehood and/or falsehood by suppression, both stands on same footing is irrelevant and not applicable on the facts of the case of the petitioner who is a trustee of the trust, since there was no suppression as believed by the learned Judge.

3.1. It is submitted that learned Judge further erred in holding that the petitioner is not a party in the suit and the petitioner has not stated any provision of CPC under which application was filed reveal non-application of mind. That nomenclature of the application is not relevant but the substance. It is therefore, submitted that third party has two legal remedies as it was settled legal position namely, either to make motion in the pending suit or to file independent suit. That, even prima facie evidence led and established by the petitioner regarding possession of the petitioner was also not believed and issuance of notice by the receiver to the petitioner was not necessary in view of endorsement made by the Receiver upon an application submitted by the petitioner that the petitioner was apprehending dispossession unlawfully. It is submitted that 11 Non-Trading Corporations had purchased different parts of the suit property and they had obtained title clearance certificate from the Bank after giving public notice to the people at large and on the basis of this title and after going through the revenue record and search carried out in the past of the Sub-Registrar, the petitioner bona fide came to the conclusion that those N.T.C's. had marketable title, and therefore, petitioner purchased different parts of the suit land from 9 N.T.C's. by paying lawful and valid consideration and possession thereafter was handed over to the petitioner. The petitioner is a religious trust and is not aware of any legal intricacies and pendency of litigation pertaining to the suit property. The rejection of objection raised by the Court below, is therefore, deserved to be quashed and set aside.

3.2. It is submitted that the petitioner has no objection to continue order for maintenance of de-jure possession of the suit property as per earlier order which remain in operation upto 2012 when Appeal From Order No. 10 of 2010 came to be dismissed by default. Thereafter, also Receiver had not taken possession of the suit property from the petitioner and the question as to what possession was obtained on 9-12-1998 which even could not be gone into in contempt proceedings being Misc. Civil Application No. 500 of 1999 by this Court till the respective suits are decided and subsequent to the order passed by the Apex Court of restoring contempt proceedings it is to be considered afresh.

3.3. Learned Advocate for the petitioner heavily relied on provision of Order 40, Rule 1(2) of C.P.C. that Receiver cannot be authorized by the Court to remove any third party possession or custody of the property of any person to whom any party to the suit has no right to remove, and therefore, it is submitted that when neither the petitioner nor those N.T.C.'s are party to the Civil Suit No. 5882 of 1997 and prayer is made about declaration of title over the suit land and further in Civil Suit No. 1313 of 2007 a prayer to quash and set aside the sale-deed executed and to be declared as nullity, and therefore, the fact that the plaintiff has filed a suit against the present petitioner till the disposal of the suit, the petitioner cannot be removed by the plaintiff from the actual possession of the suit land as contemplated under Order 40, Rule 1(2) of C.P.C.

3.4. Learned Advocate for the petitioner heavily relied on commentary of Sir

John Woodroffe on Law relating to Receiver and submitted that the Civil Suit No. 5882 of 1997 was dismissed on 29-8-2002, and therefore, appointment of Receiver had come to an end. The above aspect is not considered by the Court below in proper prospective and the matter deserves to be remanded by quashing and setting aside the order impugned.

3.5. Learned Advocate for the petitioner reiterated bona fide act of the petitioner that he is a bona fide purchaser for value without notice and proceedings filed including that of earlier Civil Suit by unauthorised plaintiff is permitted to be withdrawn as per the order passed by this Court, the rejection of application for objection deserves to be held illegal by this Court.

3.6. In support of the arguments and submissions as above learned Advocate for the petitioner has relied on the decision in the case of Prahlad Pd. Modi and Another Vs. Tikaitni Faldani Kumari and Another, about provision of Order 40, Rule 1(2) of C.P.C. that in case the third party claimant follows the remedy before a Receiver whereby it is held as under:

A third party in possession having a bona fide paramount title is not affected by the appointment of a Receiver in a suit relating to that property.

In case his possession is interfered with either by the Court, which appoints the Receiver, or the Receiver himself, he has two remedies open to him to redress his grievance (1) either to place his claim before the Court, which has appointed a Receiver for his examination pro interesse suo, or (2) to institute a regular suit with the leave of that Court.

In case the third party claimant follows the first remedy and examines himself pro interesse suo, it is for the Court to test the claim judicially so that the Court shall not by its dominant power hold the property on which the parties to the suit have no claim and hold it in despite of the real owners.

3.7. The decision in the case of Anthony C. Leo Vs. Nandlal Bal Krishnan and others, about a Receiver appointed by the Court is in actual physical possession of the property, no one who ever he may be, can disturb the possession of the receiver and the Court may hold such person who disturbs receiver's possession as guilty for committing contempt of Court. However, a man, who thinks he has a right paramount to that of Receiver, must before he takes any step of his own motion, apply to the Court for leave to assert his right. Grant of leave in such case is the rule and refusal is an exception. The rule that receiver's possession will not be disturbed without leave of the Court is, however, not applicable if the Receiver is not in actual physical possession of the property. As the property does not vest free from incumbrances in custodia legis by annulling all rights and obligations attached to the property, the receiver cannot interfere with any right of the third party. In the facts of this case also the receiver is not in actual physical possession, and therefore, possession of the petitioner is not to be disturbed.

3.8. Reliance is also placed on the extract of AIR commentaries on the CPC on the proposition of Order 40, Rule 1(2) of C.P.C.

3.9. It is therefore, submitted that the order impugned deserves to be quashed and set aside.

4. Mr. Vimal Patel, learned Advocate, for the respondent at the outset relied on factual events which have taken place till filing of this petition and so referred in the preceding part of this order. On the basis and strength of above factual aspects, it is submitted that the conduct of the petitioner is not only deprecated but held to be sufficient enough to reject the application for interim injunction as per order dated 12-3-2012 passed by learned Chamber Judge, Court No. 12, City Civil Court, Ahmedabad in Civil Suit No. 390 of 2012 filed by the petitioner-plaintiff, which ultimately came to be withdrawn on the ground that it was filed by unauthorised person on behalf of trust. Learned Advocate for the respondent would contend that suppression of facts, the manner in which suit property is purchased in spite of fact that stay granted by the Court was in operation and lis penance was also registered, is nothing but a case of mala fide intention i.e. efforts to take law in the hand solely with a view to usurp the property to which the petitioner has no title or any other right including that of possession. Learned Advocate would therefore, submit that observations and conclusions of the learned Judge, City Civil Court, while rejecting the application for objection preferred under no provision of C.P.C. is rightly rejected warranting no interference in exercise of powers under Art. 227 of the Constitution of India by this Court.

4.1. It is submitted that the petitioner has failed at every stage in the proceedings initiated by him and when notice of motion came to be rejected on 12-3-2012 by reasoned order including that of fraud and separation of vital and material facts successful attempt was made before this Court in Appeal From Order seeking permission to withdraw even Civil Suit No. 390 of 2012 filed by the plaintiff and further pendency of Appeal From Order and seeking permission to withdraw the suit was suppressed from the Court below. It is further submitted that search report carried out from time to time would reveal that the petitioner is not in possession of the suit land. That public notice given by the receiver on 21-6-2012 about no interference is to be carried out by any person as the matter is sub-judice and Court Receiver is appointed. Thus on facts as well as on law namely Order 40, Rule 1(2) of C.P.C. the petitioner has no case.

4.2. That Order 40, Rule 1(2) of C.P.C. that nothing in this rule shall authorise the Court to remove from the possession or custody of the property any person whom any party to the suit has not a present right so to remove will apply at the time of appointment of a Receiver and in the facts of this case Receiver was already appointed as early as on 2002 where the report was submitted on 27-1-2002 about existence of 80 to 90 shops and some person illegally encroaching over the property. Besides, notice of lis pendens was registered on 24-4-2001 and status quo qua the suit property was operative since 9-3-1998

and the said order was published in the newspaper. Therefore, the belated objection raised in absence of any provisions of law by the petitioner are rightly rejected. It is therefore, submitted that the petition devoid of merit deserves to be rejected.

4.3. Learned Advocate for the respondent has placed reliance in the case of Vidur Impex and Traders Pvt. Ltd. and Others Vs. Tosh Apartments Pvt. Ltd. and Others, , and submitted that party is not entitled to any relief when the property is purchased in spite of pendency of proceedings and stay order passed by the Court.

5. Having heard learned Advocates for the parties and considering record of the case following clear facts emerge from the record.

5.1. That in Appeal From Order No. 212 of 1998 and 115 of 1998 preferred before this Court arising out of dismissal of notice of motion in Civil Suit No. 5882 of 1997 on 23-2-1998 by learned City Civil Judge, vide order dated 9-12-1998 direction was given to all the parties to maintain status quo qua the suit land and the above order remained in operation.

5.2. Against dismissal of Civil Suit No. 5882 of 1997 on 29-8-2002, the First Appeal No. 1773 of 2001 was preferred in which operation of the order dated 29-8-2002 dismissing the suit came to be stayed as per order dated 11-9-2002 passed in Civil Application No. 6232 of 2002. In view of order passed in Appeal From Order No. 10 of 2002 on 20-1-2002 and order to take de jure possession of the suit property was passed. However, the above Appeal From Order No. 10 of 2002 along with Civil Application No. 89 of 2002 finally came to be dismissed for default on 28-2-2011.

5.3. For breach of order dated 9-12-1998 passed in Appeal From Order Nos. 115 and 212 of 1998, contempt proceedings were filed which were disposed of but came to be revived by the order of the Supreme Court as noted earlier.

5.4. One of the most important facet of the subject is registering notice of lis pendens on 24-4-2001 and giving details of the order of status quo passed by the Supreme Court in earlier proceedings.

5.5. Thus, when the petitioner purchased the suit property on 28-3-2006 from 9 N.T.C.'s, it is clear that by virtue of notice of lis pendens and public notice operation of order of status quo and pendency of Civil Suit pertaining to suit land was made to known to all concern.

5.6. In spite of the above, the petitioner claims to be a bona fide purchaser for value without notice.

6. In the above factual scenario, the learned City Civil Judge in the order dated 28-3-2012 passed below Exh. 143 in Civil Suit No. 5882 of 1997 recapitulated the history of the litigant between the parties including the petitioner who has made efforts to implead himself as a party in Civil Suit No. 5882 of 1997, which

came to be rejected. Even notice of motion filed by the petitioner in Civil Suit No. 390 of 2012 filed by him came to be dismissed by a reasoned order and noticing suppression of vital and material facts. In the above order also, nowhere the petitioner could establish even prima facie possession over the suit land. A plea is taken in Appeal From Order No. 154 of 2012 filed against the order dated 12-3-2012 dismissing the notice of motion/interim injunction in Special Civil Suit No. 390 of 2012 that the above suit was filed on behalf of trust by unauthorised person and therefore, the above suit being Civil Suit No. 390 of 2012 be permitted to be withdrawn with a liberty to file a suit afresh, is another attempt on the part of the petitioner to undertake further litigation.

6.1. Instead of filing a fresh suit as assured before this Court in the above Appeal From Order, suppressing the above fact of rejection of notice of motion and filing of Appeal From Order before this Court so called objection was raised by submitting an application to the Receiver of the Court and the proceedings in which the petitioner was not a party. Even the receiver of the Court had not submitted any report about possession or otherwise of the petitioner and no action was envisaged as apprehended by the petitioner. Therefore, in absence of the report of the Court Commissioner and provisions under which the objection was raised by filing an application before the receiver of the Court, the learned Judge of the City Civil Court has rightly come to the conclusion that the objection application deserves to be rejected.

6.2. That contention raised by learned Advocate for the petitioner about order of receiver had come to an end by virtue of dismissal of the Civil Suit No. 5882 of 1997 is mis conceived as on filing First Appeal No. 1773 of 2002 and Civil Application there in for stay on 11-9-2002 order was passed by this Court effectively staying the operation of the order dated 29-8-2002 of dismissal of the suit. Therefore, by virtue of the above order of stay consequence of dismissal will have no effect. That further the above appeal was ultimately allowed by quashing and setting aside the order dated 29-8-2002 and it was remanded to the trial Court.

6.3. Thus, overall conspectus of facts if seen in the context of order dated 12-3-2012 passed by City Civil Court in notice of motion in Civil Suit No. 390 of 2012 reflect on the conduct of petitioner who happened to be the plaintiff therein. For the sake of convenience the above order is reproduced in below.

6. Per Contra, the learned Advocate Mr. Kadri for defendant Nos. 1, 2 and 4 has vehemently argued and has hammered the tactics adopted by the plaintiff, as well as his legal think-tank, he has submitted that at earlier point of time, there were series of litigations for the land of Survey No. 609 of Isanpur has taken place viz. Civil Suit Nos. 1971, 1303 of 1992, 641 of 1994, 5882 of 1997, 3697 of 1995, in most of these suits, learned Advocate Mr. K. S. Shah for the plaintiff is the Advocate for the different parties, and he knows the chequered history, but without reciting a whisper of word in the present suit Mr. K.S. Shah has filed the present suit on behalf of the plaintiff, is nothing but playing fraud with the Court,

which attracts the contempt proceedings. Advocate is officer of Court and has to remain with truth and has to submit real fact to the Court for advancement of substantial justice. Out of so many litigations for the land of Survey No. 609 of Isanpur, even plaintiff was the party to the proceedings and plaintiff also knows the chequered history but without mentioning the different orders passed in said litigations, the plaintiff has got the ad-interim injunction, which is nothing but mischief with the Court, on this only aspect, the plaintiff should be thrown out from the discretionary relief.

7. Learned Advocate Mr. Kadri has further submitted that in one of the proceedings for the suit property, Hon"ble Gujarat High Court has ordered to maintain status quo and has consolidated all the suits which are pending before the City Civil Court for recording of evidence. He has further submitted that the entire suit property is in the hands of the Court Receiver appointed by the City Civil Court, Ahmedabad, in Civil Suit No. 5882 of 1997, and therefore, the plaintiff cannot claim right, title, interest and possession over the suit property. The title of the predecessor of the plaintiff is also jeopardized, and various litigations have been filed qua the suit property and challenged by the by the different parties, and therefore, the plaintiff did not acquire any right, title, interest or possession over the suit property. The plaintiff is not the bona fide purchaser. The plaintiff has executed the sale-deed despite the every minute details of the litigation is in knowledge, and therefore, the plaintiff cannot ask for any relief. He has further submitted that if any document executed in contravention of the order of the status quo passed by the Hon"ble Gujarat High Court, the subsequent purchaser does not get any title on such document and it is void document. In support of his arguments, learned Advocate Mr. Kadri has relied on the case of Bhagirath Prasad Singh @ Bachcha Babu Vs. Ram Narayan Rai @ Ram Narayan Singh and Another, , wherein it is held that by clever drafting, suppression of material facts are not permitted in law, continuation of the litigation would amount to abuse of process of law, and it liable to be rejected.

18. Having gone through the pleadings, this Court do not find a single word in the plaint regarding the earlier litigations, hence it is unfortunate that the plaintiff has suppressed all material facts in the pleadings and has also suppressed the order of the Hon"ble Gujarat High Court, the order of my learned predecessor brother Judge passed in Civil Suit No. 5882 of 1997 and has obtained the ex-parte ad-interim injunction, the entire process clearly depicts the oblique motive of the plaintiff and is think-tank. It also appears that mischief has been made with the Court and played fraud with the Court. Such act of the plaintiff requires to be deprecated. Such dilatory tactics of the plaintiff amounts to abuse of the process of the Court, and thus plaintiff on the sole aspect, is obliterated from the sphere of discretionary relief.

19. Turning back to the facts, it appears that the sole trustee of the plaintiff trust did not choose to file the present suit and surprisingly has empowered one Mr.

Harivadan Ghanshyam Bhavsar to file the suit. It is settled principle of law that the trustee cannot delegate his power to any other person including co-trustee, except trust-deed so provides. In the present case, the plaintiff has not produced the trust deed, and therefore, in the opinion of this Court Mr. Harivadan Ghanshyam Bhavsar has no locus standi or authority to file the suit on behalf of the plaintiff trust, and therefore, the suit of the plaintiff trust, since inception is bad in law. Reference can be made to the case of Jasodagirti Sohangiri Vs. Popatlal J. Majithia, , wherein it is held that "proceedings filed in the Court by Power of Attorney of the trustee of a trust, trustee cannot delegate his powers to any other person including to the co-trustee except the trust-deed so provides", therefore, in opinion of this Court, suit itself is not maintainable.

20. From the record, it appears that transactions of crores of rupees have taken place, and the plaintiff being a registered Public Trust administered under the Bombay Public Trust Act, has not clarified that whether plaintiff has acquired the permission from the Charity Commissioner before executing the sale-deed and before giving the crores of rupees to third party. It is not explained anywhere in the suit that whether permission acquired from the Charity Commissioner before purchasing the suit property, it is mandatory on the part of the public trust to obtain the permission prior to purchaser of the immovable property for the trust. In light of the above provisions the entire transactions made, required to be referred for necessary inquiry to the Charity Commissioner, Ahmedabad.

21. From the facts aforesaid, it appears that the plaintiff has committed fraud with the Court, and therefore, the plaintiff is not entitled for any relief....

(Emphasis supplied)

7. The above order would reveal that the petitioner though a public trust registered under Bombay Public Trust Act has undertaken recourse to various legal proceedings on the ground that the petitioner is a bona fide purchaser for value without notice has no basis at all. Nowhere resolution was passed by the trust empowering the trustee or manager to purchase the property of this nature in which the Court had granted order of status quo qua the suit land was in operation and prior permission of Charity Commissioner was not obtained. Not only that but notice of lis pendens was registered in accordance with law. That Civil Suit No. 1741 of 2006 and Civil Suit No. 1713 of 2007 were filed in which the petitioner was one of the defendant and the above fact was also not disclosed before the Civil Court. Therefore, though the petitioner was aware about various proceeding undertaken against it, but by suppressing the above fact suit was filed earlier, which came to be withdrawn on the ground of unauthorised representation by the plaintiff of the above suit. Even, litigation undertaken by the petitioner is as per convenience and circumstances turned against it under one or other pretext such proceedings are withdrawn. This fully establishes the fact that the petitioner has abused the process of law. The deliberate attempt is made by the petitioner trust to deprive legitimate owner of the title of the suit land and had various stages and intervals applications are

filed before City Civil Court, this Court and even instituted independent suit in which nowhere even prima facie possession could be established.

7.1. That plea based on possession of the petitioner/third party in a Suit No. 3057 of 2004 filed by Jigar Corporation and panchnama drawn therein has no substance as no evidence of prima facie nature is relied in this regard by the Court below. Therefore, the argument based on prima facie possession of the petitioner has no merit.

7.2. While considering objections raised by third party/petitioner herein learned City Civil Judge relied on above prima facie findings of a Coordinate Court rejecting application seeking injunction in suit filed by third party/petitioner herein and noticed lack of title, possession and conduct of a third party cannot be said to be in any manner uncalled for. On the contrary such conduct on the part of third party bereft of all settled legal principles seeking equitable relief can even be considered by this Court in exercise of powers under Arts. 226 and 227 of the Constitution of India. On relying prima facie observations and findings of the Co-ordinate Bench in the proceedings initiated by the third party/plaintiff herein no illegality is committed by the Civil Court while exercising the jurisdiction vested in it.

7.3. This is the case which echoes the sentiments of the Apex Court in the case of Dalip Singh Vs. State of U.P. and Others, , about conduct of the litigant who abuses process of law in instituting various proceedings. In Paragraphs 1, 2 and 3 it is held as under:

1. For many centuries Indian society cherished two basic values of life i.e. "satya" (truth) and "ahimsa" (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the Courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the Court proceedings.

2. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the Courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.

3. In Hari Narain v. Badri Das (supra) this Court adverted to the aforesaid rule and revoked the leave granted to the appellant by making the following observations.

It is of utmost importance that in making material statements and setting forth grounds in applications for special leave made under Art. 136 of the Constitution, care must be taken not to make any statements which are inaccurate, untrue or misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face-value and it would be unfair to betray the confidence to the Court by making statements which are untrue and misleading. Thus, if at the hearing of the appeal the Supreme Court is satisfied that the material statements made by the appellant in his application for special leave are inaccurate and misleading, and the respondent is entitled to contend that the appellant may have obtained special leave from the Supreme Court on the strength of what he characterizes as misrepresentations of facts contained in the petition for special leave, the Supreme Court may come to the conclusion that in such a case special leave granted to the appellant ought to be revoked.

8. Thus, above observations will aptly apply to the conduct of the petitioner. There is no substance in any of the submissions made by learned Advocate for the petitioner based on Order 40, Rule 1(2) of C.P.C. about no right either with the Court or Receiver to dispossess a third party who is in possession of the suit land. That Receiver of the Court was appointed as early as by order dated 5-12-2001 below Exh. 92 and challenge against which of course by another party in the form of Appeal From Order No. 10 of 2002 now stands dismissed for default. However, initially even in the above proceedings this Court had passed an order of taking over de jure possession by the Court Receiver. The remedy available to the third party in possession is only in a case where a third party has a bona fide paramount title but in the facts of this case in view of discussion in earlier paragraph under no circumstances it cannot be said that possession of the petitioner is a bona fide paramount title. Even otherwise also the provision of Order 40, Rule 1(2) of C.P.C. would come into play at the initial stage of operation of receiver and therefore, the above contention is of no help of the petitioner.

9. That reliance placed on Vidur Impex and Traders Pvt. Ltd. (supra) by learned Advocate for respondent No. 1 was also a case in which the subject property was purchased by clandestine nature of the transaction entered into between respondent No. 2 and appellants on the one hand and the appellants and other party namely, Bhagwati Developers giving rise to strong presumption that if a receiver had not been appointed further attempts would be made to alienate the property in similar nature. In the above circumstances, order passed by the Delhi High Court refusing to implead the aggrieved person as a party and even appointment of the Receiver came to be confirmed.

10. That other decision relied on by learned Advocate for the petitioner on the contrary will come against the petitioner as in the case of Anthony C. Leo (supra). It is clearly held that the receiver appointed by the Court is in actual physical possession of the property, no one whoever he may be, can disturb the

possession of the receiver and the Court may hold such person who disturbs Receiver's possession as guilty for committing contempt of Court. In the facts of this case as on date no final report is submitted by the receiver but in the facts of Ahmedabad Municipal Corporation and Airtel Company their possession was found illegal, orders are passed by the Court in a suit filed by the receiver to remove such illegal possession.

10.1. That reliance placed on the decision of Prahlad P. Modi (supra) can easily be distinguished on the facts. In the above case there were two objectors and their common claim was that they had been in possession of the properties specified in their petitions from long before the date of the appointment of the Receiver i.e. by order dated 23-12-1954 by the Supreme Court.

10.1.1. That Prahalad P. Modi in Civil Revision No. 1015 of 1955 stated that "the petitioner has been a lessee of the said Hat from 1947 under leases executed by the said Tikaitni Faldani Kumari, the last lease having been executed by the said Tikaitni in favour of your petitioner in 1951 for a period of 9 years." So far as 2nd petition of Civil Revision No. 1075 of 1955 S. K. Chatterjee, "the claim had arisen out of lending money from time to time to the opposite party No. 1 to defray the expenses of litigation against the Court of Wards for recovery of possession of the Pethrole Estate and also to defend a title suit brought by the agnate of the opposite party No. 1 executed a registered agreement to lease out the property and the petitioner was put in possession on 24-8-1951." Along with above, affidavits were filed and in the above context Patna High Court examined law on receiver by referring to various foreign decisions in Paras 12 to 21 of the judgment including commentary of learned author Kerr On Receivers and Halsbury Laws of England, law so declared by American Court and in Para 23 held as under:

23. In my opinion, the principles of law that arise from the authorities referred to above, are broadly speaking the following:

(1) That a third party in possession having a bona fide paramount title is not affected by the appointment of a receiver in a suit relating to that property.

(2) That in case his possession is interfered with either by the Court, which appoints the receiver, or the receiver himself, he has two remedies open to him to redress his grievance (i) either to place his claim before the Court, which has appointed a receiver for his examination "pro interesse suo" or (ii) to institute a regular suit with the leave of that Court.

(3) That in case the third party claimant follows the first remedy and examines himself "pro interesse suo", it is for the Court to test the claim judicially so that, as observed in "36 Cal 713 (N)", "the Court shall not by its dominant power hold the property on which the parties to the suit have no claim and told it in despite of the real owners."

(4) That in case of regular suit has already been instituted by the third party

claimant for the relief against the receiver or when the facts of the case are too much complicated for an easy decision in a summary proceeding like one by way of examining the objector "pro interesse suo", it is open to the Court not to decide the matter in that summary proceedings but to direct the party to get the claim tested in a regular suit on the grant of leave to him for the same.

10.1.2. Thus, out of two remedies if a third party is to follow any of the remedy requirement of law is that such third party in possession should have a bona fide paramount title which is not affected by the appointment of the receiver in a suit relating to the property. In the facts of this case as discussed hereinabove possession of the suit property by third party lacks bonafide paramount title. Therefore, the first remedy of placing the claim before the Court, which appointed a receiver, in the facts of this case, learned Civil Judge has prima facie undertaken the exercise and findings based on appreciation of material on record, found no case, warranting interference by this Court in exercise of powers under Arts. 226 and 227 of the Constitution of India. In addition to above, the decision in the case of Prahlad P. Modi (supra) also notices the fact that it is open for the third party to follow a regular suit seeking relief against the receiver or in case when the facts of the case are too much complicated for an easy decision in summary proceedings like one by way of examining the objector "pro interesse suo" it is open to the Court not to decide the matter in summary proceedings, but to direct the party to claim tested in the regular suit. As held earlier on the basis of factual assertions of the parties on the transactions which have taken place qua the suit land the petitioner has taken a calculated chances by filing Civil Suit No. 390 of 2012, in which notice of motion/application for injunction came to be rejected causing aspirations on the conduct of the petitioner/third party and even Charity Commissioner was recommended to hold inquiry into whole dealings in purchasing the land having chequered litigations without prior permission of the Charity Commissioner ultimately a successful attempt was made by withdrawing the above suit pursuant to the order passed in Appeal From Order by this Court. The sequence of events narrated in earlier paragraphs reveal that objections raised by the third party/petitioner herein devoid of merit rightly rejected by the learned City Civil Judge.

11. If the parameters prescribed for exercise of powers under Arts. 226 and 227 of the Constitution of India are seen in the case of Kokkanda B. Poondacha and Others Vs. K.D. Ganapathi and Another, , the Apex Court reiterated and relied on two decisions namely, Surya Dev Rai Vs. Ram Chander Rai and Others, and Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil, and in Paragraphs 8, 9 and 10 held as under:

8. We have considered the respective submissions. We shall first consider the question whether the High Court could interfere with the order of the trial Court without considering the question whether the said order was vitiated due to want of jurisdiction or the trial Court had exceeded its jurisdiction in deciding the application of the respondents and the order passed by it has resulted in failure

of justice. In *Surya Dev Rai's* case (supra), the two Judge Bench, after detailed analysis of the various precedents on the scope of the High Court's powers under Arts. 226 and 227 of the Constitution culled out nine propositions including the following:--

(2) Interlocutory orders, passed by the Courts subordinate to the High Court, against which remedy of revision has been excluded by C.P.C. Amendment Act 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Art. 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate Court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction - by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Art. 227 of the Constitution is exercised for keeping the subordinate Courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied:

(i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and

(ii) a grave injustice or gross failure of justice has occasioned thereby.

9. In *Shalini Shyam Shetty v. Rajendra Shankar Patil* (supra), the Court again examined the scope of the High Court's power under Art. 227 of the Constitution and laid down the following proposition:

Art. 227 can be invoked by the High Court suo motu as a custodian of justice. An improper and a frequent exercise of this power will be counter-productive 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. 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 in the larger public interest whereas Art. 226 is meant for protection of individual grievances. Therefore, the power under Art. 227 may be unfettered but its exercise is subject to high degree of judicial

discipline. The object of superintendence under Art. 227, 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 Art. 227 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 the High Court.

10. The learned Single Judge of the High Court totally ignored the principles and parameters laid down by this Court for exercise of power under Arts. 226 and 227 of the Constitution qua an interlocutory order passed by the Subordinate Court and set aside the order of the trial Court without assigning any tangible reason.

11.1. Therefore, the principles governing exercise of powers under Arts. 226 and 227 of the Constitution of India qua an interlocutory order passed by the Subordinate Court in the facts of this case, City Civil Court, it cannot be said that the order impugned in this petition is in any manner contrary to law warranting interference by this Court under Arts. 226 and 227 of the Constitution of India.

Considering overall facts of the case and law, in absence of merit, the petition is rejected with cost of Rs. 25,000/-.

Learned Advocate for the petitioner has prayed to stay this order so as to enable them to approach the higher forum.

Learned Advocate for the respondent has opposed the above request.

In view of the above and considering the facts and circumstances of the case, the request of learned Advocate for the petitioner to stay this order is rejected.