

(2011) 06 BOM CK 0084
In the Bombay High Court
Case No : Writ Petition No. 420 of 2010

Shri Narayan Gopal Prabhu Salgaonkar (deceased) represented through his legal representative Shri Rajesh Narayan Prabhu Salgaonkar and Shri Gopal Shantaram Prabhu	APPELLANT
Vs	
The General Body (Mazania) Xri. Devi Xervani and Vetal Salgaunkar of Advolpale	RESPONDENT

Date of Decision : 16-06-2011

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2011) 06 BOM CK 0084

Hon'ble Judges : A.P. Lavande, J

Bench : Single Bench

Advocate : M.S. Sonak, for the Appellant; A. Kansar, for the Respondent

Judgement

A.P. Lavande, J.—Heard Mr. Sonak, learned Counsel for the Petitioners and Mr. Kansar, learned Counsel for the Respondent.

2. Rule. By consent of the learned Counsel heard forthwith.

3. By this petition, under Article 227 of the Constitution of India, the Petitioners challenged the judgment and order dated 2/2/2010 passed by the District Judge-I, Panaji in Miscellaneous Civil Appeal No. 135/2009 by which the Lower Appellate Court has set aside the order dated 30/9/2009 passed in Regular Civil Suit No. 53/2007/B.

4. The Petitioners are the Plaintiffs in the above suit filed against the Defendant seeking permanent injunction. In the suit, the Petitioners filed an application seeking mandatory injunction by which the Plaintiffs sought direction against the Defendant to restore the passage between the Deepstambh and the Mantap up to the existing paved tiles leading to the Culapuruxas of Bapp and Matshenal within 24 hours failing which the Plaintiffs sought to do the same at the cost of the Defendant. The Trial Court by order dated 30/9/2009 dismissed the

application. However, the Plaintiffs were permitted to put thick plywood/wooden plank supported on metal frame on the pit, which is shown in photographs between the dipastambha and mantap, at the costs of the Plaintiffs till disposal of the suit.

5. The lower Appellate Court by the impugned

6. Having heard the learned Counsel for the parties and having perused the record, I am of the considered opinion that the impugned judgment and order is liable to be quashed and set aside on a very short ground. It is therefore not necessary for me to deal with the rival submissions made by the learned Counsel for the parties nor deal with the respective case set up by the parties.

7. Bare perusal of the impugned order discloses that the Lower Appellate Court has not addressed itself on the three factors which are required while deciding an application for injunction, namely, prima facie case, balance of convenience and irreparable loss and injury.

8. It is well settled that in an appeal from injunction granting or refusing injunction, the Lower Appellate Court has not only to advert to the reasons given by the Trial Court but also has to address itself to the three factors which are required for grant or refusal of injunction have been made out by the party seeking injunction against the other side. Bare perusal of the impugned order shows that the said exercise has not been undertaken by the lower Appellate Court. On this count alone, the impugned judgment and order deserves to be quashed and set aside.

9. I have not adverted to the rival submissions and the pleadings of the parties so that no prejudice is caused to both sides. It is made clear that I have not expressed any opinion on the merits of the rival claims.

10. In view of the above the judgment and order dated 2/2/2010 passed by the District Judge-I, Panaji in Miscellaneous Civil Appeal No. 135 of 2009 is quashed and set aside and the Lower Appellate Court is directed to decide the appeal afresh after giving an opportunity of being heard to both sides.

11. The parties shall appear before the Lower Appellate Court on 5/7/2011 at 10.am. Considering that the appeal is of the year 2009, the lower Appellate Court to decide the appeal expeditiously and in any case on or before 30th September, 2011.

12. The petition stands disposed of.