
(1975) 09 BOM CK 0020

In the Bombay High Court

Case No : Civil Revision Application No. 284 of 1973

SK. Jusa

APPELLANT

Vs

Ganpat Dagdu Gire and Others

RESPONDENT

Date of Decision : 02-09-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2, Order 43 Rule 1, 115

Citation : AIR 1976 Bom 222

Hon'ble Judges : Dharmadhikari, J

Bench : Single Bench

Advocate : R.E. Deshpande, for the Appellant; G.M. Joshi, for the Respondent

Judgement

1. This revision petition has been filed by the original plaintiff against the order passed by the Joint District Judge, Akola, in Misc. Civil Appeal No. 21 of 1973 dated 10-8-1973. It appears from the record that the plaintiff filed a suit for a permanent injunction against the defendants and also prayed for a temporary injunction by filing an application under Order 39, Rule 2, of the Code of Civil Procedure. According to the plaintiff, the piece of land, namely, the northern side of Survey No. 128/2 situated at Malegaon had fallen to the share of the vendors in the family partition and the vendors were personally cultivating the said piece of land. He further contended that the crop-statements of the suit land from the year 1971 onwards were standing in the name of Namdeo Ganpat. Thereafter the plaintiff entered into an agreement to purchase the said land on 28-3-1973. He further contended that as prospective purchaser he was placed in possession and he ploughed the suit land and had done the summer operations. He filed an application for a temporary injunction against the defendants Now. 1 to 3 as they were threatening to take over possession of the field. The Civil Judge, Senior Division, by his order dated 18-6-1973, on the basis of an application supported by an affidavit filed by the plaintiff, granted an ex parte temporary injunction to the plaintiff with notice to the defendants as to why it should not be made absolute till the final decision of the suit. It seems from the record that instead of

showing cause to the notice issued to them the defendants directly filed an appeal before the joint District Judge, Akola. The Joint District Judge allowed the appeal filed by the defendants and vacated the ex parte order of temporary injunction granted by the lower Court. He further directed that the learned Judge should give priority to the suit and dispose it of expeditiously. Against this order the present revision application has been filed.

2. Shri R. E. Deshpande, learned counsel for the applicant, contended before me that the learned Judge of the Appellate Court committed an error of law in interfering with the ex parte order passed by the lower Court. According to the learned counsel, the learned Judge of the trial Court had exercised the discretion judiciously. He had also issued a notice to the defendants to show cause as to why the ex parte injunction issued should not be confirmed. Instead of showing any cause, they directly approached the Appellate Court and the Appellate Court, on the basis of some reasoning which is based on his conjectures, has interfered with the well-reasoned order passed by the trial Court. Therefore, according to the learned counsel, the order passed by the appellate Court is illegal, or in any case, is vitiated by material irregularities. The learned counsel had further brought to my notice the observations of the learned Judge of the Appellate Court that the order passed by the trial Court was not perverse. According to the learned counsel, once such a finding is recorded that the order passed by the trial Court is not perverse, then it was not open for the learned Judge of the Appellate Court to have substituted his discretion in place of the discretionary order passed by the trial Court.

3. It is no doubt true that instead of showing cause in pursuance of the notice issued by the trial Court to the defendants as to why the ex parte injunction granted should not be confirmed, the defendants preferred to file an appeal. It would have been better if the defendants had appeared before the trial Court and had placed before it all the relevant material. However, for this reason only it cannot be said that the appeal filed by the defendants was not maintainable. Such a view has been taken by the Allahabad High Court in *Zila Parishad, Budaun and Others Vs. Brahma Rishi Sharma*, as well as by the Andhra Pradesh High Court in *Andhra University v. P. V. N. Raju* (1974) 2 And WR 17. It cannot be disputed that the order passed by the trial Court was passed in exercise of the powers conferred upon it under Order 39 of the Code of Civil Procedure. If this is so, then obviously an appeal was maintainable. Such a view has been taken by the Supreme Court in *Firm Ishar Das Devichand and Another Vs. R. B. Prakash Chand and Another*, . Whether at that stage the appellate Court should entertain the appeal or not is a different question. Apart from this, on the basis of the material placed before the appellate Court, it came to the conclusion that all through the defendants were in possession of the suit land. Such a finding has been recorded by the learned Judge of the Appellate Court in paragraph 6 of his judgment. This finding is based upon the crop-statements filed by the defendants pertaining to the years 1970-71 and 1972-73. The plaintiff in the present case is merely claiming possession of the suit land on the basis of an Isar Chitti

executed on 28-3-1973, whereas the learned Judge of the Appellate Court has found that right from the years 1970-71 and 1972-73 the defendants were in possession of the suit field. According to the plaintiff, the vendors of the plaintiff were in possession of the suit land on the basis of a partition deed dated 21-12-1970. There is a dispute between the parties as to whether this partition deed itself is admissible in evidence or not. In the written statement, a contention is also raised by the defendants that the so-called document styled as a partition deed was a nominal one and was never acted upon. therefore, in view of the defence of the defendants and the finding recorded by the Appellate Court in paragraph 6 of the judgment, it is obvious that the defendants were in possession of the suit land in the years 1970-71 and 1972-73, that is, even after the execution of the said partition deed. Therefore it is obvious that the finding of fact recorded by the learned Judge of the appellate Court is based on the material on record. In this view of the matter, it cannot be said that the said order is either perverse or illegal. Therefore, in my opinion, this is not a fit case wherein any interference is called for at this stage under the revisional jurisdiction of this Court u/s 115 of the Code of Civil Procedure.

4. In the result, the revision petition fails, and is dismissed. The learned Judge of the appellate Court has already directed the trial Court to give priority to this suit and dispose of it expeditiously. The trial Court is accordingly directed to give priority to the suit and dispose it of expeditiously. In the circumstances of the case, there will be no order as to costs.

5. Petition dismissed.