

Gangubai Bablya Chaudhary and Others

Vs

Sitaram Bhalchandra Sukhtankar and Others

Civil Appeals Nos. 3152-3153 of 1982

(O. Chinnappa Reddy, D. A. Desai JJ)

13.05.1983

JUDGMENT

DESAI, J. –

1. Appellants filed a suit for injunction restraining defendants 1 and 2 who were the recorded owners of the land bearing survey Nos. 32 (part) and 33 (part) equal to C.T.S. Nos. 74, 75, 84, 84(1 to 7), 95, 95(1 to 4) of village Kurar, Malad, Bombay admeasuring 8006.04 sq. metres. Defendants 3 and 4 claimed to have entered into partnership with defendants 1 and 2. In this suit a notice of motion was taken out for interim injunction restraining the respondents for interfering in any manner with the possession of the plaintiffs during the pendency of the suit. Interim injunction appears to have been granted. In an appeal, a learned Single Judge of the Bombay High Court directed the plaintiffs to file a separate suit in the High Court for declaration of the title and for injunction, whereupon the suit filed by the plaintiffs in the City Civil Court was withdrawn and suit bearing No. 1811 of 1980 was filed on the original side of the Bombay High Court. A notice of motion was taken out for interim injunction which was granted by learned Single Judge of the High Court, with a reservation for reconsideration of the order on the happening of certain events set out in the order. It appears that the respondents moved the High Court for vacating the order and the interim injunction was vacated. After an unsuccessful appeal to the Division Bench, this appeal by special leave is filed.

2. In a writ petition filed by the petitioners questioning the validity of the order granting the use of F.S.I. for the whole land including the land on which the plaintiffs claimed title, an interim injunction was obtained restraining the use of the F.S.I. by the respondents. Subsequently, this interim order was vacated. After an unsuccessful appeal, the present appeal has been filed by special leave.

3. Mr. V. S. Desai addressed at some length for the appellant and Mr. Tarkunde for the respondents.

4. This court is called upon to examine the proceeding at the stage when it is necessary to find out whether plaintiffs have a prima facie case to enable them to obtain an interim injunction restraining the respondents from interfering with their possession as also restrain-the respondents from using the F.S.I. for the whole of the land ? The whole plot is around 17,000 sp. metres. Plaintiffs claimed title to and possession of an area admeasuring 8006.04 sq. metres. The use of the F.S.I. is granted to the respondents on the footing that they are entitled to put up construction over the entire area admeasuring 17,000 sq. metres. It is also necessary to examine where the balance of convenience lies.

5. It is unfortunate that this is ore or less a fight by proxy. Plaintiffs have executed an irrevocable power of attorney in favour of Shri Velji Ramlal Shah & Shri Gashi Ramlal Shah. Similarly respondents 1 and 2 who were the original defendants 1 and 2 had entered into a partnership with defendants 3 and 4 contributing the land involved in the dispute as their capital and defendants 3 and 4 bringing in cash contribution and this partnership is dissolved whereby respondents 1 and 2 have taken the cash and the land involved in the dispute has gone to defendants 3 and 4. We do not propose to express any opinion on the nature of this transaction. Fact remains that this is a fight by proxy.

6. When an interim injunction is sought, the court may have to examine whether the party seeking the assistance of the court was at any time in lawful possession of the property and if it is so established one would prima facie ask the other side contesting the suit to show how the plaintiffs were dispossessed ? We pin-pointed this question and heard the submission. We refrain from discussing the evidence and recording our conclusions because evidence is still to be led and the contentions and disputes have to be examined in depth and any expression of opinion by this court may prejudice one or the other party in having a fair trial and uninhibited decision. Having given the matter our anxious consideration, we are satisfied that this is not a case in which interim injunction could be refused. Similarly we are of the opinion that if respondents are allowed to put up construction by the use of the F.S.I. for the whole of the land including the land involved in dispute, the situation may become irreversible by the time the dispute is decided and would preclude fair and just decision of the matter. If on the contrary injunction is granted as prayed for the respondents are not likely to be inconvenienced because they are in possession of about 9000 sq. metres of land on which they can put up construction.

7. We accordingly allow both the appeals set aside the decision of the learned Single Judge vacating the injunction in both the matters as well as the decision of the appellate bench and order that the respondents are restrained from interfering with the possession of the plaintiffs-appellants of the suit land. The respondents are further restrained from using the F.S.I. on the footing that they are in possession of the whole of the land.

8. In view of the fact that we grant interim relief, we direct that the hearing of the suit and the writ petition from which these appeals arise be expedited and we hope and trust that the High Court would give top priority to the same consistent with its calendar.

9. In the circumstances of the case, there will be no order as to costs.

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