

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 17478-17479 OF 2017
[@ SPECIAL LEAVE PETITION (C) NOS. 16748-16749/2016]

VIRENDRABHAI DEVJIBHAI PATEL

APPELLANT(S)

VERSUS

KESHAVBHAI MAKANBHAI AND ORS ETC.

RESPONDENT(S)

WITH

C.A. NO.17480/2017 @ S.L.P. (C) NO.28949/2017 @ CC NO. 22137/2016

J U D G M E N T

KURIAN, J.

Leave granted.

2. The alleged violation of an interlocutory injunction dated 21.02.2007 passed in RCS No.59/2007 on the file of Civil Judge, Senior Division, Surat has given rise to these appeals. The prayer in the Application for Interlocutory injunction reads as follows:-

“(a) To grant interim stay order till the final disposal of the suit in favour of

the plaintiff and against the defendants that since the undistributed share registered land bearing Dist. Surat Tal. Choryasi Moje village Vesu R.S. No. (old) 550 (New) No.346, admeasuring 20700 sq. mts. paiki 13800 sq. mts. is purchased by the plaintiff from the defendants through the registered sale deed and the defendants directly or indirectly through his servants, agents, or other persons does not have any right authority to act, interfere, hinder, oppose, to bring deficiency in the possession occupancy rights of the plaintiff, and to prevent the defendants from making any type of process, administration, transaction, arrangement or documents in the form of sale deed with regard to the questionable and prevent the defendants from doing or getting done any type of acts which bring deficiency in the ownership, possession, occupancy of the plaintiff with regard to questionable land. Be pleased to pass the order to forward a Yadi of this order to the Talati cum Mantri - Vesu and Mamlatdar (Choryasi) and Deputy Collector (Choryasi Region) - Surat."

3. In terms of the said prayer, the VIth Additional Senior Civil Judge and J.M.F.C., Surat granted an interim order dated 21.02.2007. While the order was

in force, it appears there was a transfer of an extent of 6900 sq. mts. inter se defendants.

4. After a detailed inquiry on an application under Order XXXIX Rule 2A of the C.P.C., the Trial Court passed the following order on 08.08.2014:-

"The application at Exh-203 is allowed as the defendants No.2 to 8, 10 to 15 have willfully breached the ad-interim injunction dated 21.02.2007 below Exh-5 and the Contemnors i.e. the Defendants No.2 to 8, 10 to 15 and Proposed Contemnors are hereby ordered to be detained in Civil prison for 15 days upon deposition of subsistence allowance @ Rs.2,000/- per person by the Plaintiff. The Defendants No.2 to 8 & 10 to 15 are further directed to cancel the Sale Deed and put the land in the original situation as prevailing on the date of passing ad-interim order of injunction.

Order pronounced in Open Court today on 08.08.2014."

5. The High Court was of the view that the Trial Court was not justified in passing the order, and in particular for cancellation of the sale deed. The High Court reached the said conclusion mainly on the

basis that the transferees were not originally the defendants; they were only impleaded by the Court as defendants while passing the order on the application filed under Order XXXIX, Rule 2A. The High Court has also taken the view that in any case there is no justification in issuing a direction for cancellation of the document since the power under Order XXXIX Rule 2A is only to punish the alleged contemnors and attach the property.

6. We are afraid, the stand taken by the High Court may not be wholly correct. Going by the injunction granted by the Trial Court is it fairly clear that the defendants if at all could have made any transfer it could have been only the undivided share and not the specific portion of the property, which is certainly in violation of the spirit of the order.

7. Faced with such a situation, learned senior counsel, on instruction, submits that the defendants may be permitted to execute an appropriate rectification deed making the sale deed dated 19.2.2008 only as a transfer of undivided share and not any specific portion of the entire property comprising of 20700 sq. mts.

8. Having regard to the apologetic stand thus taken

by the defendants we are of the view that the appeals can be disposed of as follows:-

The parties to the sale deed dated 19.2.2008 are directed to execute an appropriate rectification deed within a month from today making it clear that the transfer of 6900 sq. mts. sought to be made on 19.2.2008 as per the sale deed is only in respect of the undivided share in the whole property comprising of 20700 sq. mts. and not any specific portion.

If such a rectification deed is made and if the Trial Court is satisfied that the rectification deed is in the spirit of the order passed by this Court, the Court shall proceed with the suit and dispose of the same expeditiously and preferably within a period of one year.

9. We make it clear that there shall be no further alienation or creation of encumbrance in respect of the entire 20700 sq. mts. property until the suit is finally disposed of.

10. We further make it clear that it will be open to the parties to lead evidence afresh.

11. The orders passed by the Trial Court and the High

Court will stand modified, as above.

12. The appeals are, accordingly, disposed of.

13. Pending applications, if any, shall stand disposed of.

14. There shall be no orders as to costs.

.....J.
[KURIAN JOSEPH]

.....J.
[R. BANUMATHI]

NEW DELHI;
OCTOBER 31, 2017.