

HIGH COURT OF MADHYA PRADESH  
BENCH AT INDORE

**Miscellaneous Appeal No.5456/2018**

**Smt. Suman Chouksey**  
**Vs.**  
**Dinesh Kumar and others**

---

Shri V.K.Jain, Sr. Advocate assisted by Shri Vaibhav Bhagwat,  
Advocate for the appellant.

Shri M.K.Jain, Advocate for the respondents

---

**WHETHER APPROVED FOR REPORTING: YES**

**(A) PRIMA FACIE CASE, BALANCE OF CONVENIENCE:**

This Court in the case of **Shankarlal Debiprasad Rathore Vs. State of MP., and others, 1978 MPLJ 419** held that *it is not part of the Court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavits as to facts on which the claims of either party may ultimately depend and not to decide difficult questions of law which call for detailed arguments and mature considerations. "These are matters to be dealt with at the trial."* It is further held that *plaintiff is not required to make out a clear legal title, but has only to satisfy the Court that he has fair question to raise as to the existence of the legal right claimed by him in the suit.* Therefore, unless the material available to the Court at the hearing of the application for an interlocutory injunction fails to disclose that plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial, the Court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought.

(Emphasis supplied)

**(B) APPELLATE JURISDICTION:**

The trial Court essentially exercises discretionary jurisdiction under Order 39 rule 1 and 2 CPC. Hence, unless; the discretion so exercised suffers from perversity of approach or vitiated by glaring errors of fact or law or capricious or palpably perverse, the appellate Court normally should not interfere with exercise of jurisdiction in appeal if other view was possible (Judgment of Hon'ble Supreme Court in the cases of **Wander Limited Vs. Antox India (P) Ltd., 1990 Supp SCC 727** is followed).

**Reserved on: 25/09/2019**

**ORDER**  
**(04/10/2019)**

**Rohit Arya, J**

This miscellaneous appeal under Order 43 rule 1(r) CPC is

directed against the order dated 19/11/2019 passed in civil suit No.3A/2018 by Eighth Additional District Judge, Ujjain allowing application under Order 39 rule 1 and 2 CPC granting temporary injunction in favour of the plaintiffs.

Suit for declaration that sale deeds dated 28/03/2010 (Annexure A/3) and 18/03/2011 (Annexure A/6) allegedly executed by defendant No.3 (power of attorney holder of plaintiffs) in favour of defendant No.1 are *null and void* & not binding on the plaintiffs and permanent injunction restraining defendants No.1 to 3 from interfering with the possession and forcible dispossession of the plaintiffs is pending consideration.

2. Pleadings in the plaint for the purpose of this appeal in nutshell are as follows:

(i) plaintiffs are residents of Indore and the suit land is situated in district Ujjain;

(ii) plaintiffs and defendant No.2 are well-known to each other since the time of plaintiffs' father was alive (died on 23/12/2010) who was in the business of real estate and on many occasions developed land, divided into plots and sold to individuals in association with defendant No.2;

(iii) defendant No.3 is stated to be servant of defendant No.2;

(iv) during life time, Jayaramji Kashya had also executed a power of attorney in favour of defendant No.3 for the purpose of division of plots and execution of sale deeds, etc., He was a trusted person of the family;

(v) agricultural land admeasuring 1.390 hectare and 0.760 hectare falling in survey Nos.265 & 266/1 respectively situated in village Pingaleshwar tehsil and district Ujjain are of the ownership of the plaintiffs duly recorded in the revenue record in respect

whereof on suggestion of defendant No.2 two power of attorneys were executed by plaintiffs in favour of defendant No.3 on 10/09/2009 (Annexure A/1) and 28/01/2011 (Annexure A/2). The description of properties in both the power of attorneys are same and covered the entire land; the suit land;

(vi) plaintiffs had filed suit for injunction being suit No.89A/2010 before the civil Court against Wahid and Wazid sons of Abdul Aziz having apprehension of unwanted and illegal interference with the possession of the suit land. On the suggestion of defendant No.2, Shri Manish Manana, Advocate was engaged as counsel for the plaintiffs;

(vii) defendant No.2 in his evidence on affidavit dated 10/08/2010 in the aforesaid suit has supported the case of plaintiffs that they are in possession of the entire suit land for grant of temporary injunction. Advocate Shri Manish Manana had identified defendant No.2. Plaintiff No.1's evidence was also prepared by Advocate Shri Manish Manana and his associates on 22/12/2010 and the plaintiff was cross-examined on 02/12/2011. Thereafter, he was assured by the counsel that he would not be required in day to day hearing and shall be communicated as and when his presence was required;

(viii) plaintiffs pleaded that they did not authorize defendant No.3 to execute the sale deeds dated 28/03/2010 (Annexure A/3) and 18/03/2011 (Annexure A/6) in favour of defendant No.1. The sale deeds so executed by him were without their knowledge and consent. No consideration amount has been received. Defendant No.3 has fraudulently executed the sale deeds;

(ix) defendants No.1 and 2 did not disclose the sale deeds dated 28/03/2010 (Annexure A/3) and 18/03/2011 (Annexure A/6) to the plaintiffs at any time prior to the year 2013, firstly; before filing the application dated 10/01/2013 under Order 7 rule 11 CPC seeking dismissal of civil suit No.51A/2012, on the premise that the sale deed dated 18/03/2011 (Annexure A/6) part of the suit land since has been transferred in favour of defendant No.1, nothing survives in the instant suit and secondly, filing an application by defendant No.1 for substitution of her name in place of the plaintiffs before the Tehsildar in the year 2013.

The plaintiffs were taken surprise, therefore filed an application under Order 21 rule 3 CPC to withdraw the suit No.51A/2012 with liberty to file a suit for declaration and injunction. Accordingly, filed the instant the suit seeking declaration and both sale deeds, 28/03/2010 and 18/03/2011 are null and void and not binding and permanent injunction restraining defendants interfering with possession of the plaintiffs over the suit land.

(x) besides, defendant No.2 without knowledge and consent through the same advocate managed to file an application under Order 22 rule 10 CPC at the instance of defendant No.1 for substitution in place of plaintiffs and thereafter, withdrawn the suit No.89A/2010. This fact surfaced at a later stage when the plaintiffs obtained certified copy of order dated 04/05/2013;

(xi) plaintiffs also filed objection through advocate on 15/02/2013 against the claim of mutation before Tehsildar by the defendant No.1; and

(xii) plaintiffs also filed a criminal complaint against the defendants No.1 to 3 before the Chief Judicial Magistrate, First Class and the same is pending consideration.

3. Defendants filed written statement and in reply denied plaintiff allegations with the submission that defendant No.3 has executed both the sale deeds in favour of defendant No.1 under the valid and registered power of attorneys executed by plaintiffs in favour of defendant No.3. The sale consideration amount was paid and possession of the suit land was delivered. As such, the said facts all along been in the knowledge of the plaintiffs.

4. Both plaintiffs and defendants in support of their respective claim for possession have placed on record FIR and counter-FIR filed against each other, photographs etc., of the suit land. Besides, the plaintiffs asserted that they dug a well for irrigation purpose and also constructed couple of rooms at the suit land with further submission that defendants with anti-social elements had come to the suit land and assaulted their workers and also caused damage to the construction with threat of dire consequences (I.A.No.1/2014).

5. The trial Court while addressing on questions of three-fold principle, viz., *prima facie* case, balance of convenience and irreparable injury has in fact dealt with all relevant facts and documents quite diligently with maturity and reached impeccable conclusions.

**(A) *Prima facie* case;**

The trial Court has found that **(i)** the first sale deed is said to be executed on 28/03/2010 (Annexure A/3) with details of survey No.265 area 0.44 hectare out of 1.39 hectare and 0.760 hectare from survey No.266/1; total 1.20 hectare in favour of defendant No.1 by defendant No.3; **(ii)** however, the power of

attorney dated 28/01/2011 (Annexure A/2) has been shown in relation to the entire suit land whereas the first sale deed was executed on 28/03/2010 and the defendant No.2 is a witness to the power of attorney. Therefore, defendants No.2 and 3 in collusion have suppressed the factum of execution of earlier sale deed to the plaintiffs and got prepared subsequent power of attorney; (ii) civil suit No.89A/2010 for injunction was filed by the plaintiffs on 07/06/2010 in respect of the suit land against Wahid and Wazid sons of Abdul Aziz wherein the defendant No.2 has filed evidence on affidavit dated 10/08/2010 that the entire suit land is in possession of the plaintiffs. Therefore, in his affidavit also, he has suppressed the fact of execution of sale deed dated 28/03/2010; (iii) during pendency of civil suit No.89A/2010, the second sale deed dated 18/03/2011 was also executed for the remaining area of suit land and thereafter, application under Order 22 rule 10 CPC was filed by defendant No.1 for substitution in place of original plaintiffs. The copy of application was never supplied to the plaintiffs and no notice was served upon them. It appears that the same advocate, Shri Manish Manan has played double role and thereafter the suit was withdrawn; (iv) the disclosure of both the sale deeds was made in the year 2013 at the instance of defendant No.1 on 18/01/2013 by filing an application under Order 7 rule 11 CPC seeking dismissal of suit No.51A/2012 and while application for mutation of the suit land was filed before the Tehsildar. Thereafter, the copies of sale deeds were supplied to the plaintiffs though an objection was filed on 15/02/2013 before the Tehsildar; (v) there is no explanation forthcoming as to why after both the sale deeds were executed, the defendants did not disclose execution of sale deeds till the year 2013. Besides, the power of attorney dated 28/01/2011 does not mention that part of the suit land has been transferred in favour of defendant No.1 by sale deed dated 28/03/2010 instead the entire suit land has been mentioned therein. In the application dated 10/01/2013 under Order 7 rule 11 CPC also there is no disclosure of the alleged first sale deed dated 28/03/2010. Under such circumstances, the trial Court has concluded that *prima facie*, the sale deeds were executed without knowledge and consent of the plaintiffs (paragraph 18 to 23 of the order). That apart, the previous sale deeds in favour of the plaintiffs are still with plaintiffs which normally handed over to the subsequent purchasers after execution of sale deeds.

**(B) balance of convenience & irreparable loss/possession:**

(a) The defendant No.2 in his evidence on affidavit dated 10/08/2010 in civil suit No.89A/2010 has not disclosed the alleged first sale deed dated 28/03/2010 and the possession of the suit land was handed over to the defendant No.1 instead, he has stated that the entire suit land is in possession of the plaintiffs.

(b) That apart, the defendant No.3 in paragraph 14.4 sought to explain that the entire suit land was mentioned in the subsequent power of attorney dated 28/01/2011 for the reason that it was not possible to define the land in two separate parts. Under the circumstances, the trial Court found that the claim of delivery of possession of part of the suit land in terms of first sale deed dated 28/03/2010 to be false and misleading. Therefore, the trial Court concluded that pursuant to sale deed dated 28/03/2010, the possession was not delivered to the defendant No.1 (paragraph 26 of the order).

(c) In the proceedings for mutation filed in the year 2013 before the Tehsildar, the defendant No.1 in her cross-examination has admitted that while the dispute between the plaintiffs and Wahid and Wazid in civil suit No.89A/2010 was pending in the civil Court, the demarcation of entire suit land was carried out at the instance of the plaintiffs. Under such circumstances, the trial Court found that the claim of delivery of possession of part of the suit land pursuant to sale deed dated 28/03/2010 is incorrect and false.

(d) The application Order 22 rule 10 CPC for substitution at the instance of the defendant No.1 in place of plaintiffs in civil suit No.89A/2010 was submitted on 29/02/2012. Therefore *prima facie*, upto 29/02/2012, the possession of the entire suit land was with the plaintiffs. Hence, pursuant to both the sale deeds, viz., 28/03/2010 and 18/03/2011, the defendants cannot be said to be in possession over the suit land. The trial Court found that record of suit No.89A/2010 does not disclose that copy of the aforesaid application was served to the plaintiffs. That apart, there is no documentary evidence on record as regards delivery of possession.

(e) Mere mentioning of delivery of possession in the sale deeds dated 28/03/2010 and 18/03/2011 executed by defendant No.3 in favour of defendant No.1 was found to be of no consequence as the same was *prima facie* without knowledge and consent of the plaintiffs. Hence, the act of delivery of possession is found to be suspicious and misleading (paragraphs 26 to 29 of the order).

(f) The trial Court has also considered *panchnama* and report

dated 08/05/2013 filed by defendant No.1 in the context of claim of possession and has found that there is no notice of such demarcation or signature of the plaintiffs on such *panchnama*. That apart, the Commissioner, Ujjain in case No.30/Misc./2012-13 while passing order on 12/06/2014 has found that the proceedings initiated by Tehsildar are vitiated being contrary to rules (paragraph 31 of the order). Thereafter, in paragraphs 31 and 32 has dealt with some ancillary facts and concluded that the suit land is in possession of the plaintiffs.

6. Shri Jain, learned senior counsel for the appellant taking exception to the order impugned, has tried to persuade this Court that execution of sale deeds by defendant No.3 in favour of defendant No.1 are *bona fide* with knowledge and consent of the plaintiffs and upon payment of consideration followed by delivery of possession. Hence, plaintiffs does not have *prima facie* case and no serious disputed questions of fact and law arise for decision on detailed arguments and critical evaluation of evidence. Therefore, the impugned order deserves to be set aside.

7. *Per contra*, learned counsel for the respondents/plaintiffs has supported the order impugned and prayed for dismissal of the appeal.

8. **Heard.**

9. Before adverting to contentions of Shri Jain, learned senior counsel for the appellant, it is expedient to reiterate the principles on which interlocutory injunctions are granted as examined and reiterated by this Court in the case of **Shankarlal Debiprasad Rathore Vs. State of MP., and others, 1978 MPLJ 419**, it is held that ***it is not part of the Court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavits as to facts on which the claims of either party may ultimately depend and not to decide difficult questions of law which call for detailed arguments and mature considerations. "These are matters to be dealt with at the trial."*** It is further held that ***plaintiff is not required to make out a clear legal title, but has only to satisfy the Court that he has fair question to raise as to the existence of the legal right claimed by him in the suit.*** Therefore, unless the material available to the Court at the hearing of the application for an interlocutory injunction fails to disclose that plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial, the Court should go on to



consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought.

(Emphasis supplied)

10. The grant of temporary injunction and interference by the appellate Court in regard to such discretionary order, the Hon'ble Supreme Court in the case of **Wander Limited Vs. Antox India (P) Ltd., 1990 Supp SCC 727** observed as under:

“... the Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion.”

The aforesaid view has been reiterated by Hon'ble Supreme Court in the case of **Seema Arshad Zaheer and others Vs. Municipal Corporation of Greater Mumbai and others, (2006) 5 SCC 282.**

11. The trial Court essentially exercises discretionary jurisdiction under Order 39 rule 1 and 2 CPC. Hence, unless; the discretion so exercised suffers from perversity of approach or vitiated by glaring errors of fact or law or capricious or palpably perverse, the appellate Court normally should not interfere with exercise of jurisdiction in appeal if other view was possible.

12. The submissions advanced by Shri Jain, learned senior counsel either in the context of execution of power of attorneys or possession in question in fact and in effect have been dealt with by the trial Court *in extenso* The entire material placed on record has been meticulously examined and upon relative assessment and evaluation critically, the trial Court has addressed the three-fold principle, *prima facie* case,

balance of convenience and irreparable loss while granting the interlocutory injunction in favour of the plaintiffs. The order so passed is speaking and well reasoned, therefore, does not warrant interference.

13. Appeal sans merit and is hereby dismissed. No order as to cost.

14. Before parting with the case, it is made clear that this Court has not expressed any opinion on merits of the case. Any observation made or discussion on merits in this order is only for the purpose of disposal of this appeal and shall not have no bearing on merits of the case.

b/-

(Rohit Arya)  
Judge  
04-10-2019

