

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 17th OF MAY, 2024

MISC. PETITION No.2167 of 2024

BETWEEN:-

1. ANIL MALEWAR, S/O. LATE B.G. MALEWAR, AGED ABOUT 54 YEARS, OCCUPATION-SELF EMPLOYED, R/O. 100, PURANI PP COLONY, GVARIGHAT ROAD, JABALPUR, DISTRICT JABALPUR (M.P)
2. RANJIT LADIYA, S/O. LATE MOOLCHAND LADIYA, AGED ABOUT 47 YEARS, OCCUPATION-SELF EMPLOYED,
3. SANDEEP LADIYA, S/O. LATE MOOLCHAND LADIYA, AGED ABOUT 42 YEARS, OCCUPATION-SELF EMPLOYED,

NO.2 AND 3 R/O. 1222/1, NARMADA NAGAR, GVARIGHAT ROAD, JABALPUR, DISTRICT JABALPUR (M.P.)

...PETITIONERS

(BY SHRI AVINASH ZARGAR – ADVOCATE)

AND

1. SMT. SARLA BOTHRA, W/O. SHIKHARCHAND BOTHRA, ADULT, 437/1, NEW 1, HOWBAGH, GEORGE DA'SILVA WARD, JABALPUR, DISTRICT JABALPUR (M.P.)
2. STATE OF MADHYA PRADESH, THROUGH COLLECTOR, JABALPUR, DISTRICT JABALPUR (M.P.)
3. TAHSILDAR CUM EXECUTIVE MAGISTRATE, TAHSIL-GORAKHPUR-2, DISTRICT JABALPUR (M.P.)
4. NEERAJ SUKHEJA, S/O. LATE SEWARAM SUKHEJA,

ADULT, R/O. IDEAL ESTATE, NEAR BADSHAH HALWAI
MANDIR, GVARIGHAT ROAD, DISTRICT JABALPUR
(M.P.)

5. SMT. JOGINDER KAUR, W/O. SHRI MAHENDRA SINGH
GUJRAL, ADULT.

6. MAHENDRA SINGH GUJRAL, S/O. MEHAR SINGH,
ADULT,

5 AND 6 R/O. HOUSE NO.1500, RATAN COLONY,
GORAKHPUR, JABALPUR, DISTRICT JABALPUR (M.P.)

7. RAKESH MANCHANI, S/O. MOHAN DAS MANCHANI,
ADULT,

8. SHANKAR MANCHANI, S/O. MOHAN DAS MANCHANI,
ADULT.

7 AND 8 R/O. HOUSE NO.8, NAPIER TOWN, JABALPUR,
DISTRICT JABALPUR (M.P.)

.....RESPONDENTS

(SHRI ANSHUMAN SINGH – ADVOCATE FOR RESPONDENT NOS. 50 TO 8)

Reserved on : 02.05.2024

Pronounced on : 17.05.2024

*This petition having been heard and reserved for orders, coming
on for pronouncement this day, the Court pronounced the following:*

ORDER

Since pleadings are complete and learned counsel for the parties are ready to argue the matter finally, therefore, it is heard finally.

2. The petitioners have filed this petition under Article 227 of the Constitution of India challenging validity of the order dated 06.04.2024 (Annexure P/1) passed by the appellate Court in an appeal preferred before it challenging the order passed by the trial Court. The trial Court on an application submitted by the plaintiffs under Order 39 Rule 4 of Code of Civil Procedure in a civil suit no.282/2016 granted injunction but appeal was allowed granting injunction, setting aside the order dated

23.06.2016 passed by the trial Court. The plaintiffs/petitioners thus filed this petition challenging the order passed by the appellate Court on the ground that the appellate Court has not considered the factual and legal position in an appropriate manner while allowing the appeal and, therefore, it is claimed that the order passed by the appellate Court which is impugned in this petition be set aside and the order passed by the trial Court be restored.

3. The facts leading to the present petition in nutshell are as under:-

3.1 The petitioner No.1/plaintiff No.1 (hereinafter referred to as the 'plaintiff No.1') purchased land/plot admeasuring 1755 st. ft. of Khasra No.24/2, P.H. No. 29, located at Polipathar, Gwarighat main road, Jabalpur vide registered deed of sale dated 03.02.1990 from its original owner namely Bhola Kol. In the said sale deed, inadvertently, "Khasra No.13-14" was mentioned in place of "Khasra No.24/2". This mistake came to the knowledge of plaintiff No.1 only after the demarcation was done under the direction of the civil court in litigation initiated by plaintiff No.1 against Ashok K. Malhotra. Thereafter, the aforesaid mistake was corrected by executing registered amended deed dated 27.06.2002 and the sale deed dated 03.02.1990 was amended to the extent that 'Khasra No.13-14' was replaced with 'Khasra No.24/2'.

3.2 That, the petitioner Nos. 2 and 3/plaintiff Nos. 2 and 3 (hereinfter referred to as the 'plaintiff Nos.2 and 3') purchased land/plot admeasuring 2400 sq. ft. bearing Khasra No.24/1, PH No.24/2 located at Gwarighat Ward, Jabalpur vide registered sale deed dated 29.12.2002 from its erstwhile owner namely Dr. Kumkum Seth.

3.3 That, the defendant No.1 Sarla Bothra purchased a land admeasuring 0.29 hectares bearing Khasra No.24/2 located at Polipathar, National Highway 164, PH No.29, Jabalpur vide registered

sale deed dated 30/31.10.2002 from four persons namely (1) Rameshwar Prasad Dubey, (2) Ranjeet Singh, (3) Arun Kumar Paranjape and (4) Ashok Malhotra. In the original sale deed, the location of the land was shown about half kilometre away from Gwarighat main road in the agricultural fields. This sale deed was lateron corrected by executing correction deed dated 26.12.2002 changing the location of land.

3.4 The defendant No.1 thereafter on 09.06.2008 executed a Power of Attorney for sale of the aforesaid property in favour of one Digvijay Singh Gujral. In this Power of Attorney, it was deliberately mentioned that the property purchased by Sarla Bothra (defendant No.1) is located at Polipathar, Gwarighat Main Road, Jabalpur.

3.5 On the strength of aforesaid Power of Attorney, the land purchased by Sarla Bothra (defendant No.1) was sold to one Neeraj Sukheja (defendant No.4) vide sale deed dated 17.06.2008 but this sale deed could not be registered for non-payment of adequate stamp duty and the matter pertaining to payment of deficit stamp duty pending before Collector of Stamps and as per the plaintiffs, the sale deed dated 17.06.2008 is not a legally admissible document and does not convey any title.

3.6 However, Neeraj Sukheja (defendant No.4) executed a Power of Attorney in favour of Mahendra Singh Gujral (defendant No.6) and Rajesh Manchani (defendant No.7) on 11.08.2008 for a sale of property originally purchased by defendant No.1 (Sarala Bothra).

3.7 On the basis of said Power of Attorney dated 11.08.2008, Mahendra Singh Gujral (defendant No.6) and Rajesh Manchani (defendant No.7) executed two registered deeds of sale on 01.11.2008. The sale deed clearly reveals that the same has been executed by defendant Nos. 6 and 7 in their own favour thereby selling 22,000 sq. ft.

of plot out of total 32,000 sq. ft. of land held by Sarla Bothra (defendant No.1) to itself but the remaining land i.e. 10,000 sq. ft. of land sold by defendant No.5 namely Jaginder Kaur (who is wife of defendant No.6) and defenant No.8 namely Shankar Manchani (who is brother of defendant No.7).

3.8 The defendant No.1 Sarla Bothra filed a suit seeking relief of permanent injunction against plaintiff No.1 and others on or about 29.01.2003. In this suit, defendant No.1 filed an application for grant of temporary injunction to the effect that plaintiffs herein be restrained from interfering with her alleged possession but it was rejected vide order dated 08.04.2003 on the ground that defendant No.1 is not in possession of the aforesaid property. Further, in this suit, vide order dated 01.09.2003, the application filed by plaintiff No.1 for grant of temporary injunction was allowed and the parties were directed to maintain status-quo. Although, the order dated 01.09.2003 was affirmed vide order dated 17.11.2003 by the appellate Court. Thereafter, the defendant No.1 withdrew her suit vide order dated 07.09.2007 without seeking any liberty.

3.9 The defendant No.1 Sarla Bothra despite having sold the property purchased by her and after having lost litigation pertaining to permanent injunction before the civil court, sometime in the year 2015, filed an application under Section 250 of the Madhya Pradesh Land Revenue Code, 1959 against plaintiff No.1 and mother of plaintiff Nos. 2 and 3 which was allowed vide order dated 30.04.2016.

3.10 The plaintiffs preferred a suit on or about 09.05.2016 seeking relief of declaration of title in respect of property purchased by them vide registered deeds of sale and in the present case, this is the property said to be the 'suit property'. The plaintiffs also sought relief of

declaration that the order dated 30.04.2016 be declared null and void and also claimed relief of permanent injunction. The plaintiffs also filed an application seeking relief of temporary injunction protection of their possession over the suit property.

3.11 The reply to the said application was filed by the defendant No.1 and the trial Court vide order dated 23.06.2016 allowed it and restrained the defendant Nos. 1 to 3 from dispossessing the plaintiffs.

3.12 Thereafter, the defendant No.1 filed her written-statement on or about 13.01.2017.

3.13 The plaintiffs after coming to know on 10.09.2018 that defendant No.1 Sarla Bothra has sold the property owned by her to defendant No.4 Neeraj Sukheja and further alienate the property to defendant Nos.5 to 8, moved an application under Order 1 Rule 10 of CPC by impleading defendant Nos. 4 to 8. The said application was allowed by vide order dated 14.05.2019.

3.14 The defendant No.4 (Neeraj Sukheja) has also filed his written-statement on or about 12.03.2019 wherein in paragraphs 11 and 12, he has specifically pleaded that the land sought to be purchased by him from Sarla Bothra through Power of Attorney Holder Digvijay Singh Gujral.

3.15 On 09.12.2019, the defendant Nos. 5 to 8 filed their joint written-statement, opposing the claim of the plaintiffs.

3.16 The defendant Nos. 5 to 8 filed an application under Order 39 Rule 4 of the Code of Civil Procedure on or about 30.01.2023 seeking vacation of order dated 23.06.2016.

3.17 The plaintiffs filed a reply and opposed the prayer. This application was rejected vide order dated 30.05.2023.

3.18 Against the order dated 30.05.2023, the defendant Nos. 5 to 8 preferred an appeal which has been allowed vide impugned order dated 06.04.2024 which is impugned in this petition; hence this petition.

4. Learned counsel for the petitioners has submitted that the order impugned dated 06.04.2024 has been assailed by the plaintiffs/petitioners on the ground that the same suffers from error apparent on the face of record and is manifestly illegal. The order runs contrary to the law laid down by the Supreme Court and also by High Court pertaining to grant of injunction. It is based upon perverse finding. The appellate Court has failed to see that the plaintiffs are in possession of the suit property and vacating the order dated 23.06.2016 would lead to their forcible dispossession. It is also contended that the sale deed dated 03.02.1990 and the finding recorded in this respect that by this sale deed, only material was sold but not the plot is factually incorrect and unsustainable in law. It is also contended by counsel for the petitioners that the claim of the defendant Nos. 5 to 8 is based on the sale deed dated 17.06.2008 which was not registered because of deficit stamp duty and the issue is pending before Collector of Stamps, as such, the said sale deed does not confer any right and title to the defendant Nos. 5 to 8 but this aspect has been overlooked by the appellate Court. It is also contended on behalf of the petitioners that the issue which has been raised by defendant Nos. 5 to 8 seeking vacation of interim order does not fall within the purview of Order 39 Rule 4 of the Code of Civil Procedure and as such, the order which is impugned in this petition is illegal and deserves to be set aside.

5. Learned counsel for the petitioners has further submitted that while granting injunction, the prime consideration before the Court was as to who was in possession of the suit property on the date of filing the

suit and according to him, plaintiffs were in possession of the suit property and their possession ought to have been protected by the appellate Court. It is also contended by counsel for the petitioners that the finding recorded by the appellate Court that the land purchased by defendant No.1 Sarla Bothra is located at the Main Road is contrary to the finding recorded by the trial Court in order dated 08.04.2013 (Annexure P/13). He has placed reliance upon decisions of Supreme Court reported in **2023 SCC Online SC 1585-Vijay Vs. Union of India, (2021) 20 SCC 425-Shankar Vs. Surendra Singh Rawat** and in a case reported in **(2005) 1 SCC 705 Atma Ram Properties (P) Ltd. Vs. Oriental Insurance Private Limited.**

6. The Supreme Court in case of Vijay (**supra**) in paragraphs 19 and 28 has held as under:-

“.....and a three-judge Bench of this Court in Suraj Lamp and Industries Pvt. Ltd. v. State of Haryana⁶ in considering the scope of an agreement to sell observed thus:

“18. It is thus clear that a transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title, or interest in an immovable property can be transferred.

.....
 28. The object of the Stamp Act is to collect proper stamp duty on an instrument or conveyance on which such stamp duty is payable. Section 35 is a provision to cater for the instruments not being properly stamped and, as such, not being admissible in evidence. A document not duly stamped cannot be admitted for any purposes. To impose the bar of admissibility provided under this section, the following twin conditions are required to be fulfilled:

- (i) Instrument must be chargeable with duty;
- (ii) It is not duly stamped.”

7. Further, the Supreme Court in case of Shankar (**supra**) in paragraph 12 has held as under:-

“.....The civil court rightly found that an unregistered sale deed could not confer title.....”.

8. Similarly, the Supreme Court in case of *Atma Ram Properties (supra)* in paragraph 9 has observed as under:-

9. “Dispossession, during the pendency of an appeal of a party in possession, is generally considered to be “substantial loss” to the party applying for stay of execution within the meaning of clause (a) of sub-rule (3) of Rule 5 of Order 41 of the Code. Clause (c) of the same provision mandates security for the due performance of the decree or order as may ultimately be passed being furnished by the applicant for stay as a condition precedent to the grant of order of stay. However, this is not the only condition which the appellate court can impose. The power to grant stay is discretionary and flows from the jurisdiction conferred on an appellate court which is equitable in nature. To secure an order of stay merely by preferring an appeal is not a statutory right conferred on the appellant. So also, an appellate court is not ordained to grant an order of stay merely because an appeal has been preferred and an application for an order of stay has been made. Therefore, an applicant for order of stay must do equity for seeking equity. Depending on the facts and circumstances of a given case, an appellate court, while passing an order of stay, may put the parties on such terms the enforcement whereof would satisfy the demand for justice of the party found successful at the end of the appeal. In *South Eastern Coalfields Ltd. v. State of M.P.* [(2003) 8 SCC 648] this Court while dealing with interim orders granted in favour of any party to litigation for the purpose of extending protection to it, effective during the pendency of the proceedings, has held that such interim orders, passed at an interim stage, stand reversed in the event of the final decision going against the party successful in securing interim orders in its favour; and the successful party at the end would be justified in demanding compensation and being placed in the same situation in which it would have been if the interim order would not have been passed against it. The successful party can demand (a) the delivery to it of benefit earned by the opposite party under the interim order of the High Court, or (b) compensation for what it has lost, and to grant such relief is the inherent jurisdiction of the court.....”

9. Per contra, Shri Anshuman Singh, learned counsel for the respondent/defendant Nos. 5 to 8 has opposed the submission made by counsel for the petitioners and submitted that the sale deed whereby plaintiffs purchased the property i.e. Annexure P/3 dated 03.02.1990 is not for purchase of land but it is only material which got purchased and

from the sale deed, it is clear that the vendor was Bhola Kol and this sale deed was further amended after 12 years and by way of amended sale deed, not only location of the land but the total description of the land got changed. As per the original sale deed, the land is situated over Khasra No.13-14 and by amended sale deed, land was shown to be of Khasra No.24/2. He has further submitted that in the revenue records since long, the land belonging to Khasra No.24/2 is recorded in the name of Rameshwar Prasad Dubey but it has never been recorded in the name of Bhola Kol who is the vendor of the plaintiffs. He has submitted that when land belonging to Khasra No.24/2 was never owned and possessed by Bhola Kol then question of selling the said land does not arise and thus, it is clear that the plaintiffs fraudulently and with the collusion of Registry Department changed the land and its location from Khasra No.13-14 to Khasra No.24/2. At the same time, he has submitted that the sale deed of defendant Nos. 5 to 8 clearly reveals that their vendor was Sarla Bothra and Sarla Bothra purchased the land belonging to Khasra No.24/2 from the original owner Rameshwar Prasad Dubey. Sarla Bothra thereafter sold the said land to Neeraj Sukheja and Neeraj Sukheja sold the land to defendant Nos. 5 to 8 and as such, it is clear that the land purchased by defendant Nos. 5 to 8 situate over Khasra No.24/2 which had been recorded since long in the name of Rameshwar Prasad Dubey.

10. Learned counsel for the respondents has further submitted that the map attached with the sale deed makes it clear that the land of plaintiffs was virtually half kilometre away from the Main Road but by way of amended sale deed, they have shown their land adjoining to the Main Road. He has further contended that by sale deed dated 29.12.2002 (Annexure P/4), Smt. Meera Bai Ladiya purchased the land of Khasra

No.24/1, area 2400 sq. ft. and map attached with the sale deed clearly indicates that the land purchased by Meera Bai Ladiya was adjoining to the land of Rameshwar Prasad Dubey who is the vendor of Sarla Bothra who purchased the land from Rameshwar Prasad Dubey by sale deed dated 30/31.10.2002 which got amended on 26.12.2002. He has also pointed out that the original sale deed of the plaintiffs very clearly contained that they purchased the material of house situate over Khasra No.13-14, area 405 sq. ft. He has further submitted that when plaintiffs never purchased the land situate over Khasra No.24/2 and Bhola Kol, vendor of the plaintiffs never shown to be the owner in possession of land of Khasra No.24/2 then as to how injunction can be granted of the land which is not belonging to the plaintiffs.

11. Shri Anshuman Singh has also filed an application (IA No.603/2024) along with the documents showing that as per the report of Tahsildar at the time of mutation, an application was moved under Section 109/110 of the M.P. Land Revenue Code, 1959 wherein it is shown that Khasra No.24/2 was shown to be recorded in the revenue record in the name of Rameshwar Prasad Dubey but the name of Bhola Kol was not there. He has further submitted that in pursuance to the order dated 01.11.2023 passed by this Court in W.P. No.27378/2023, the Court of Nayab Tahsildar, Gorakhpur conducted a demarcation and the report clearly indicates that the land of Khasra No.24/2 is adjoining to the Main Road and has also shown from the map that Khasra No.13-14 was situated half kilometre away from the Main Road. He has also drawn attention of this Court that when defendant No.1 Sarla Bothra purchased the land by sale deed dated 30/31.10.2002 and thereafter got the said sale deed amended vide order dated 27.06.2002 and as per amended deed, the land purchased by Sarla Bothra was shown to be

located adjoining to the Main Road and as such, her name was recorded in the revenue record and thereafter said land was sold by Sarla Bothra to Neeraj Sukheja and from Neeraj Sukheja, defendant Nos. 5 to 8 purchased the land. He has also submitted that the plaintiffs have no prima facie case in their favour. The sale deed (Annexure P/3) in favour of the plaintiffs also creates doubt whether land was purchased from Bhola Kol or it was the material purchased by the plaintiffs. He has submitted that this aspect has been considered by the appellate Court and found that the sale deed was a fraudulent document for the reason that Bhola Kol was a tribal and without permission of the Collector, he could not sell the land and as such, fraudulent sale deed was prepared. He has submitted that for granting injunction, plaintiffs have to prove a prima facie case but here the appellate Court has rightly found that they do not have any prima facie and as such, set aside the injunction granted by the trial Court. In support of his contention, he has placed reliance upon the decisions of the Supreme Court reported in **(2010) 1 SCC 689 Kashi Math Samsthan and another Vs. Shrimad Sudhidra Thirtha Swamy and another, (2014)2 SCC 269 Union of India and others Vs. Vasavi Cooperative Housing Society Limited and others, (2019) 6 SCC 82 Jagdish Prasad Patel (Dead) through Lrs Vs. Shivnath and others** and in a case reported in **(2010) 8 SCC 329 Shalini Shyam Shetty Vs. Rajendra Shankar Patil.**

12. The Supreme Court in case of Kashi Math (**supra**) in paragraph 16 has observed as under:-

“It is well settled that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prove prima facie case to go for trial, question of considering

the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the court to grant injunction in his favour even if, he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted. Therefore, keeping this principle in mind, let us now see whether the appellant has been able to prove prima facie case to get an order of injunction during the pendency of the two appeals in the High Court.”

12. Further, the Supreme Court in case of Vasavi Cooperative Housing Society Limited (**supra**) in paragraph 19 has held as under:-

“The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. We are of the view that even if the title set up by the defendants is found against (sic them), in the absence of establishment of the plaintiff's own title, the plaintiff must be non-suited.”

13. The Supreme Court in case of Jagdish Prasad Patel (**supra**) in paragraph 44 has observed as under:-

“In the suit for declaration of title and possession, the respondent-plaintiffs could succeed only on the strength of their own title and not on the weakness of the case of the appellant-defendants. The burden is on the respondent-plaintiffs to establish their title to the suit properties to show that they are entitled for a decree for declaration. The respondent-plaintiffs have neither produced the title document i.e. patta-lease which the respondent-plaintiffs are relying upon nor proved their right by adducing any other evidence. As noted above, the revenue entries relied on by them are also held to be not genuine. In any event, revenue entries for few khataunis are not proof of title; but are mere statements for revenue purpose. They cannot confer any right or title on the party relying on them for proving their title.”

14. The Supreme Court in case of Shalini Shyam Shetty (**supra**) in paragraph 49 has held as under:-

“On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:

(a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by the High Court under these two articles is also different.

(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of superintendence on the High Courts under Article 227 and have been discussed above.

(c) High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.

(d) The parameters of interference by High Courts in exercise of their power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in *Waryam Singh* [AIR 1954 SC 215] and the principles in *Waryam Singh* [AIR 1954 SC 215] have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in *Waryam Singh* [AIR 1954 SC 215] , followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and courts subordinate to it, “within the bounds of their authority”.

(f) In order to ensure that law is followed by such tribunals and courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

(i) The High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench

of this Court in *L. Chandra Kumar v. Union of India* [(1997) 3 SCC 261 : 1997 SCC (L&S) 577] and therefore abridgment by a constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

(o) An improper and a frequent exercise of this power will be counterproductive and will divest this extraordinary power of its strength and vitality.

15. Considering the submissions made by counsel for the parties and the judgments relied by them, this Court is of the opinion that the main contention of counsel for the petitioners is that the sale deed executed in favour of the defendant Nos. 5 to 8 was not a valid document as it

suffers from deficit stamp duty and a case for deficit stamp duty was pending before Collector of Stamps and as such, no title was conferred in favour of defendant Nos. 5 to 8 and as per counsel for the petitioners, the appellate Court has not considered this aspect in appropriate manner. However, as per learned counsel for the respondents, respondents have submitted a document to show that deficit stamp duty has been paid by the respondents and has also filed a receipt showing that on 06.05.2024, an amount of Rs.22,41,897/- was paid and an amount of Rs.8,16,500/- was paid on 07.05.2024 and as such, the dispute with regard to deficit stamp duty is over.

16. Indisputably, the plaintiffs filed a suit for permanent injunction and for declaring the order of Tahsildar passed on 30.04.2016 illegal and also moved an application for temporary injunction. The title of the plaintiffs over the suit property was based upon the sale deed dated 03.02.1990 (Annexure P/3). It is also a settled principle of law that a party who seek injunction has to prove that he has made out a prima facie, balance of convenience is also in his favour and will suffer irreparable loss if injunction is not granted to him. It is also equally settled that when a party fails to prove a prima facie case but go for trial, the question of considering balance of convenience or irreparable loss and injury to the party concerned would not be material at all. Here in this case, the sale deed which is Annexure P/3 is the sole foundation of the plaintiffs' right and unless plaintiffs satisfy the Court about their right and title over the suit property, it is difficult to ascertain that they have a prima facie case. The appellate Court has considered this aspect and in paragraph-7 of its order has reproduced the recital of sale deed (Annexure P/3) which contained that “मकान के प्लॉट पर आप क्रेता का हक नहीं रहेगा/”. As per counsel for the respondents/defendants, the sale deed is

not for purchasing the land but it is for purchasing the material of a house situated over Khasra No.13-14, area 405 sq. ft. The appellate Court, therefore observed that as to why such type of sale deed executed and prima facie observed that such sale deed is a fraudulent document. Bhola Kol belongs to the Scheduled Tribe and as per M.P. Land Revenue Code, 1959, he has no right to sell the land as has been observed by the appellate Court.

17. It has also been observed by the appellate Court that the amendment deed whereby the khasra of the land was changed from 13-14 to 24/2 and comparing the sale deed of Sarla Bothra who purchased the land from Rameshwar Prasad Dubey whose name was recorded since long in the revenue record as owner of Khasra No.24/2 and has also observed that the location of land purchased by Sarla Bothra which was as per amended deed dated 26.12.2002 was adjoining to the main road whereas the land of the plaintiffs as per the map shown by Shri Singh is much ahead from the main road. The appellate Court has also observed as to how the amended deed made in favour of plaintiffs/petitioners can be prima facie considered to be improper and as such I am of the opinion that the observation made by the appellate Court prima facie does not appear to be unreasonable.

18. Shri Singh has repeatedly argued that when Bhola Kol who is vendor of the plaintiffs was never shown to be a bhoomi-swami of land of Khasra No.24/2 then as to how by any deed, the land of Khasra No.24/2 can be considered to be sold by Bhola Kol to plaintiffs and, therefore, the title of the plaintiffs over the land of Khasra No.24/2 is under shadow. It is a case in which Sarla Bothra purchased the land from Rameshwar Prasad Dubey and thereafter her name was recorded in the revenue record and from Sarla Bothra it got purchased by Neeraj

Sukheja and then from Neeraj Sukheja by plaintiff Nos. 5 to 8. The order impugned was attacked by counsel for the petitioners mainly on the ground that the appellate Court has ignored the fact that defendant Nos. 5 to 8 have no right over the land belonging to Khasra No.24/2 because their sale deed is not duly stamped although document submitted by counsel for the defendants showing that the deficit stamp duty was paid by them but at the relevant point of time when the appellate Court has considered this aspect, the appellate Court found that the sale deed though registered but not duly stamped showing right over the property. In my opinion as has been discussed hereinabove, it is for the party to prove his case who is asking injunction. The plaintiffs have to prove its case but they cannot get any benefit of weakness of the case of defendants.

19. The Supreme Court in case of Kashi (**supra**) and further in case of Vasabi (**supra**) as also in case of Jagdish (**supra**) has very categorically observed that the burden is on the plaintiffs to establish their right over the suit property and as such, here in this case, the appellate Court after scrutinizing the sale deeds of plaintiffs as also of defendants has categorically observed that sale deed of plaintiffs prima facie appears to be a fraudulent document. I find that there is nothing unreasonable in the observation made by the appellate Court. The finding of the appellate Court is based upon the documents produced before the Court. The sale deed though said to be not duly stamped but it prima facie gives impression that the land was purchased by defendants and they were put in possession of the land. Admittedly, it is not a case of proving title and seeking declaration of title but it is a case of permanent injunction over the land which is prima facie in possession of the

defendants/respondents by virtue of sale deed which has now got duly stamped.

20. Considering the aforesaid enunciation of law, I am also of the opinion that there is nothing unreasonable observed by the Court and the documents placed before it were duly considered and properly appreciated. The finding given by the appellate Court cannot be substituted by this Court. The judgments on which counsel for the petitioners has placed reliance in the facts and circumstances of the case and issue involved therein to some extent have no significance because this is a case where the plaintiffs have to prove *prima facie* case in their favour and as such, in view of the submissions made by counsel for the parties and the documents available on record, I do not find any illegality in the finding given by the appellate Court as no case is made out in favour of the plaintiffs/petitioners to grant injunction over the land belonging to Khasra No.24/2 and as such, the order impugned does not call for any interference.

21. The petition being *sans* merit, is hereby **dismissed**.

(SANJAY DWIVEDI)
JUDGE