

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 3650 OF 2008

[Arising out of Special Leave Petition © No.16346 of 2005]

Shaikh Ali Hossain and Ors.

...Appellants

VERSUS

Sh. Showkat Ali and Anr.

...Respondents

J U D G M E N T

TARUN CHATTERJEE, J.

A. By a separate Judgment, my learned brother R.V. Raveendran, J. has allowed the appeal, whereas, by this Judgment, I have dismissed the appeal for the reasons set out in the Judgment.

1. Leave granted.
2. This appeal is directed against the judgment and order dated 18th May, 2005 passed by a learned Judge of the High

Court at Calcutta in C.O. No.3868 of 2004. By the impugned order, the learned Judge, in the exercise of his supervisory power under Article 227 of the Constitution, had set aside the concurrent orders of the courts below which had rejected the application for injunction filed by the plaintiffs-respondents and directed the parties to maintain status quo with regard to the suit properties which have been fully described in Schedules 'A' and 'B' to the plaint as follows:

Schedule A

"All that piece and parcel of land measuring 6.5 decimal together with structures standing thereon in Dag No.129 Khatian No.943, R.S. Plot No.233 being the portion of premises No.108A, Dr. Girindra Sekhar Basu Road, Calcutta-700 039, Police Station Kasba, District South 24- Parganas.....

Schedule B

All that the premises No.108, Dr. Girindra Sekhar Basu Road, Calcutta-700 039 Police Station Kasba, being land with structure lying and situate at the South Western side under Dag No.129, Khatian No.943, Mouza Kasba, District South 24-Parganas....."

3. The respondents as plaintiffs instituted the suit in the First Court of the Civil Judge, Junior Division, Alipore, South 24 Parganas, West Bengal against the appellants, inter alia,

praying for a decree for declaration that the appellants had no right, title and interest in the suit properties and for permanent injunction. In the aforesaid suit, the respondents filed an application for injunction restraining the defendants/appellants from disturbing, alienating, dealing, encroaching and/or interfering with the possession of the respondents in respect of the suit properties (in short “the application for injunction”) in which it was, inter alia, alleged that in view of an earlier order of this Court in SLP [C] No.4263-65 of 1992, the respondents were entitled to an order of injunction as prayed for. Both the courts below on the interpretation of the order of this court rejected the application for injunction of the respondents. Feeling aggrieved, the respondents moved an application before the High Court under Article 227 of the Constitution which was allowed by the impugned order. By the impugned order, the High Court had set aside the concurrent orders of the courts below rejecting the application for injunction and directed the parties to maintain status quo in respect of the suit properties till the disposal of the suit. Aggrieved by this

order, the instant special leave petition has been filed in respect of which leave has already been granted.

4. Having heard the learned counsel appearing for the parties and after examining the entire materials on record, including the order passed by the High Court, the courts below as well as the order passed by this court in SLP [C] No.4263-65 of 1992, we find that the High Court as well as the courts below disposed of the application for injunction primarily on the interpretation given to the aforesaid order of this court in SLP [C] No.4263-65 of 1992. As the only question involved in this appeal is whether the High Court was justified in setting aside the concurrent orders of the courts below rejecting the application for injunction under Article 227 of the Constitution on a different interpretation given to the order of this court in SLP [C] No.4263-65 of 1992, we propose to narrate the admitted facts in respect of which no dispute has been raised by the learned counsel for the parties and which would be required to decide the abovementioned question posed before us.

5. The predecessor-in-interest of the respondents namely Ujir Ali Mistry and Bahar Ali Mistry were originally the owners of Dag No.129 under Khatian No.943 of Mouza Kasba being holding No.108, Dr. Girindra Sekhar Basu Road, Calcutta comprising 37 decimals of land. The predecessor-in-interest of the respondents sold 33 decimals of land out of 37 decimals to Late Shaikh Anwar Hossain ("S.A. Hossain" for short), the predecessor-in-interest of the appellants 1 to 7, by a registered deed of sale dated 27th February, 1948. The 33 decimals, as aforesaid, was identified as holding No.108A, Dr. Girindra Sekhar Basu Road, Calcutta 700 039. Subsequently, disputes and differences cropped up between the predecessor-in-interest of the parties with respect to the validity of the sale deed and title and possession of the respective parties in connection with the premises No.108A, Dr. Girindra Sekhar Basu Road, Calcutta. Three suits were filed by the predecessor-in-interest of the parties against each other concerning the aforesaid 33 decimals of land. However, the dispute that had arisen in respect of the aforesaid 33 decimals was resolved by this court by an order passed in SLP [C] No.4263-65 of

1992 [Satkari Bibi @ Mata Bibi and Ors. Vs. Sk. Anwar Hossain and Ors.] in the following manner:

“Substitution allowed.

Leave granted.

We are happy to note that the parties have adopted a very fair stand in this Court. Admittedly the first respondent had purchased 33 decimals of land from their uncles Ujir Ali Mistri and Bahar Ali Mistri. It is also not in dispute that the appellants are in possession of 6.5 decimals of land. The respondents have fairly agreed that the appellants will be owners and to remain in possession and enjoyment in perpetuity of 6.5 decimals of land. The respondent shall not interfere with the aforesaid land. Equally the appellant shall not interfere with the possession and enjoyment of rest of the land. This decision is in modification of the decree of the Trial Court in Suit No.67/71, Title Suit No.189/71 and 421/71. The decree of the Trial Court is accordingly modified. Both the parties are directed not to interfere with the possession and enjoyment of respective lands. The appeals are disposed of accordingly. No costs.”

6. The High Court as well as the courts below considered the aforesaid order of this court and interpreted the same in the manner indicated in their respective orders and the courts below, in so doing, rejected the application for injunction whereas the High Court directed for maintenance of status quo in respect of the suit properties till the disposal of the suit.

7. While rejecting the application for injunction on the interpretation of the order of this Court in SLP [C] No.4263-65 of 1992, the trial court recorded the following prima facie findings:

“.....The plaintiff’s main contention in this suit is that the 6.5 decimal land remains in both A and B Schedule property as there is no demarcation by mets and bounds.

I have gone through the solemn order of the Hon’ble Supreme Court, India in SLP 4263-65/92 wherefrom I find that the appellants are in possession of 6.5 decimal land and the respondents are in possession of 33 decimal land. The respondent shall not interfere in the appellants land and the appellants shall not interfere in the respondents land.

Therefore, from the aforesaid judgment it is crystal clear that the plaintiffs and the defendants portions have been settled in perpetuity by order of the Hon’ble Court. The possession of the respective parties have been settled by their own conduct in compromise.

Therefore, I think that the plaintiffs cannot say that their land measuring 6.5 decimal remains in both A and B Schedule land.”

8. It may also be noted that the trial court, while rejecting the application for injunction, also came to a conclusion that the respondents should file a suit for partition as they had made out a case to the effect that they had interest in both the schedule properties.

9. In appeal, the Appellate Court, while affirming the order of the trial court, made the following findings:

“Having considered the submissions made by the learned counsel on both sides and also after perusal of the order passed by the learned Trial Judge in this regard, we come to find that admittedly, the plaintiffs are in possession of 6.5 decimals of land and in view of the order of the Hon’ble Supreme Court the parties are also enjoined from interfering with each other’s possession in their respective lands. Under such circumstances, the balance of convenience and inconveniences does not favour the plaintiffs in any manner whatsoever.

Admittedly, they own 6.5 decimals of land and there is no material to show that the defendants have threatened to invade their right or possession in respect of the said 6.5 decimals of land. There is no prima facie material to support the allegation of the plaintiffs that they would suffer irreparable loss and injury if no order of injunction was passed. Even if the plaintiffs are assumed to have triable issues to go to trial, then also it is not established from the materials produced that the plaintiffs, were entitled to get an order of injunction as prayed for, and therefore, I fail to agree with the submission made by the learned advocate appearing for the plaintiffs/appellants, that there has been an error by the learned trial judge in refusing the prayer for temporary injunction.”

10. As noted hereinabove, by the impugned order, the High Court, by taking into consideration the order of this court passed in SLP [C] No.4263-65 of 1992 and thereafter

interpreting the said order in the manner it had done, directed the parties to maintain status quo after setting aside the orders of the courts below.

11. It is true that the High Court, while exercising its supervisory power under Article 227 of the Constitution will not interfere or set aside the orders of the courts below on a question of fact or law until and unless it appears to it that such decisions of the courts below were, on the face of it, perverse and made on erroneous assumptions of law or that they were wrong which was apparent on the face of record. In **Mohd. Shafi** Vs. **Addl. D & Sessions Judge** [AIR 1977 SC 836], this court, however, pointed out as to when would the High Court be entitled to interfere even with the concurrent findings of fact or law. It was held that when interpretation of a provision of an act is involved, which is admittedly a question of law, it would be open to the High Court to interpret the said provision of the act and come to a different conclusion than the one arrived at by the courts below, if it finds that the orders of the courts below were apparently erroneous and de hors the legal position and accordingly, interference with the concurrent orders of the

courts below was held to be proper and justified. Therefore, it is equally well settled that the High Court may interfere with the concurrent orders of the courts below if it finds that in reaching their conclusion, the courts below had proceeded on a wrong interpretation of the provisions of a particular act or statute. In this connection, we may readily rely on the observations of this Court in the case of **Mohd. Shafi** [supra], which are as follows:

“The High Court seemed to take the view that the finding of the Prescribed Authority that Explanation (iv) was applicable in the present case was a finding of fact and since this finding of fact was affirmed by the District Court in appeal, it was not competent to the High Court to interfere with it in the exercise of its extraordinary jurisdiction under Article 226 of the Constitution and that was presumably the reason why the High Court accepted the hypothesis that the case was covered by Explanation (iv). But this view of the High Court is plainly erroneous because the question whether Explanation (iv) is attracted in the present case would depend on the applicability to the facts of the correct interpretation of the Explanation and it would, therefore, clearly be a mixed question of law and fact, and if the High Court found that in reaching its conclusion on this question the District Court proceeded on a wrong interpretation of the Explanation, the High Court could certainly correct the error and set aside the conclusion reached by the District Court. We must, therefore, first consider what is the proper construction of the language employed in Explanation (iv).”

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12. Keeping the aforesaid principles laid down in the abovementioned decision of this court in mind, which of

course was based on the interpretation of a provision of an act, we hold that the High Court would, similarly, be entitled to interfere with the concurrent orders of the courts below on the interpretation of a judicial order, either of the High Court or of this court. It is also, now, an established position in law that if the High Court finds that the interpretation of an order of this court given by the courts below was either wrong on the face of record or even when two interpretations were possible and the interpretation given by the High Court was more plausible in nature, this court in the exercise of its discretionary power under Article 136 of the Constitution may not be inclined to interfere with the order of the High Court, even if the High Court, by its order, had set aside the concurrent orders of the courts below. The learned counsel appearing on behalf of the appellants vehemently argued before us that even if two possible interpretations of the order of this court were available, this court would be entitled to interfere with the order of the High Court on the footing that the High Court had gone wrong by interfering with the concurrent orders of the courts below. We are unable to accept this contention of the learned counsel for

the appellants. As observed earlier, this court in the case of *Mohd. Shafi* [supra], has held that the High Court would be entitled to interfere with the concurrent orders of the courts below if it finds that the interpretation given to a provision of an act or statute by the courts below was wrong and the view taken by the High Court was more plausible than the views expressed by the courts below. This court, while considering the scope of interference under Article 227 of the Constitution has also held that when the orders of the courts below are patently erroneous and de hors the factual and legal position on record, the High Court is entitled to interfere with such an order in the exercise of its supervisory power under Article 227 of the Constitution. (See **Savita Chemicals (P) Ltd. Vs. Dyes & Chemical Worker's Union and another** [(1999) 2 SCC 143]. In **Union of India & ors. Vs. Gangadhar Narsingdas Aggarwal and another** [(1997) 10 SCC 305], this court has reiterated the principle that even if two views are possible, the view taken by the High Court being a plausible one, it would not call for intervention by this court under Article 136 of the Constitution. Therefore, it cannot be said that the High

Court, under Article 226 or 227 of the Constitution, would not at all be entitled to interfere with the concurrent orders of the courts below, more so when the High Court finds that the courts below had proceeded on a wrong interpretation or that the orders of the courts below were incorrect on the face of record and accordingly, if the High Court replaces its own view on the basis of its interpretation of the order of this court, this court would not interfere with the order of the High Court, if the view taken by the High Court is a plausible one, in the exercise of discretionary power under Article 136 of the Constitution. It is also well settled that if the order of the High Court rendered substantial justice to the parties or did not prejudice either of the parties, such order need not be interfered with under Article 136 of the Constitution. In **Yallawwa Vs. Shantavva** [1997 (11) SCC 159], this court refused to interfere with the order of the High Court when it was found that substantial justice was done to the parties by the same. There is another aspect of this matter. If this court, while exercising its power under Article 136 of the Constitution, finds that there is nothing illegal in the reasoning of the order of the High Court and the conclusions

arrived at by it appear to be well merited and quite in accordance with the rule of interpretation, there is no reason to set aside the said order of the High Court, even though, by the said order, the High Court had set aside the concurrent orders of the courts below in the exercise of its supervisory power under Article 227 of the Constitution. In **Jai Mangal Oraon Vs. Mira Nayak (Smt) and others** [(2000) 5 SCC 141], this court reiterated the same principle, as noted hereinabove, and laid down that when there was nothing illegal and wrong in the reasoning and conclusions arrived at by the High Court and the same appeared to be well merited and in accordance with the interpretation of statutory provisions, this court would not interfere with the order of the High Court under Article 136 of the Constitution. It is equally well settled that if this court is of the view that the law declared by the High Court was wrong, even then, in the exercise of its power under Article 136 of the Constitution, this court, in its discretion, may refrain from interfering with the order of the High Court if special circumstances are not shown to exist and the justice of the case on facts does not require interference. In

Taherakhatoon (D) By Lrs. Vs. Salambin Mohammad

[(1992) 2 SCC 635], this court at paragraph 20 has observed as follows:

“In view of the above decisions, even though we are now dealing with the appeal after grant of special leave, we are not bound to go into merits and even if we do so and declare the law or point out the error-still we may not interfere if the justice of the case on facts does not require interference or if we feel that the relief could be moulded in a different fashion.....”

13. From the aforesaid discussion and applying the principles deduced from the decisions referred to hereinabove, we, therefore, come to the conclusion that this court would not interfere with the order of the High Court under Article 136 of the Constitution if the following conditions exist: -

- a. Where two views are possible and the view taken by the High Court is a plausible one;***
- b. Where the order of the High Court rendered substantial justice to the parties or did not prejudice either of the parties;***
- c. Where there is nothing illegal in the reasoning of the order of the High Court and the conclusions arrived at by it appear to be well merited and quite in accordance with the rule of interpretation;***
- d. Where the order of the High Court is based on the ground that the concurrent orders of the courts below were wrong or incorrect on the face of record.***
- e. Where no special circumstance is shown to exist and the justice of the case on facts does not require interference.***

14. Keeping these conditions in mind and applying the principles laid down by this court in the decisions referred to hereinabove, we now propose to take up the question whether the High Court was justified in interfering with the concurrent orders of the courts below in the exercise of its supervisory power under Article 227 of the Constitution and even if, it is found that the High Court was not so justified, whether this court shall interfere with such an order of the High Court in the exercise of its discretionary power under Article 136 of the Constitution. To answer this question, we have to examine the order of this court passed in SLP [C] No.4263-65 of 1992 in depth. A bare look at the above order of this Court would clearly show that the predecessor-in-interest of the appellants had purchased 33 decimals of land from Ujir Ali Mistry and Bahar Ali Mistry-the predecessor-in-interest of the respondents. It is not in dispute that the total land in plot No.108, as it originally stood, was 37 decimals. The order of this court would show that the appellants in SLP(C)No.4263-65 of 1992 (respondents in this appeal) were in possession of 6.5 decimals of land and the predecessor-in-interest of the appellants herein i.e. S.A. Hossain and others, had admitted that the appellants

in SLP(C)No.4263-65 of 1992 (respondents in this appeal) would be the owners and in possession and enjoyment in perpetuity of the said 6.5 decimals of land. It is also evident from the order of this Court that the respondents herein shall also not interfere with the possession and enjoyment of the **rest of the land**. It appears from the record that the predecessor-in-interest of the present appellants had no right, title and interest in the remaining four decimals of land in plot No.108, Dr.Girindra Shekar Basu Road, Calcutta. This is because Schedule 'B' of the plaint of the instant suit relates to the property which was the subject matter of a partition suit which also ended before this Court in another SLP No.7156 of 1982 and wherein it was held by this court that Late S.A. Hossain, the predecessor-in-interest of the present appellants, did not acquire any share in respect of the said'B' Schedule property. The orders passed by the courts below would show that the said orders were passed, inter alia, on the interpretation of the order of this court in SLP(C)No.4263-65 of 1992 by holding that the title of the predecessor-in-interest of the appellants was declared by this court in the aforesaid order in respect of 33 decimals of land in premises No. 108A, Dr.

Girindra Sekhar Basu Road, Calcutta. The Courts below also held that the title of the respondents was declared by this court in the aforesaid order in respect of the rest 6.5 decimals of land in Premises No. 108, Dr. Girindra Sekhar Basu Road, Calcutta-39. The case of the appellants 1 to 7 is that the actual extent of Holding No. 108 was 39.5 decimals, which was wrongly assumed as 37 decimals and therefore, the respondents were in actual possession of 6.5 decimals (instead of 4 decimals) in Holding No. 108. At this stage, we prefer to read the order of this court more minutely. From a reading of the same, it appears to us that the expression “rest of the land” appearing in the order of the Supreme Court must be given a special significance, as has been rightly held by the High Court in the impugned order. Therefore, we are to consider whether, by using the expression “rest of the land”, their Lordships meant the balance of 33 decimals of land after deducting 6.5 decimals therefrom i.e. 26.5 decimals of land or whether they meant something else. As noted hereinabove, this 33 decimals of land was purchased by the predecessor-in-interest of the appellants 1 to 7 from the predecessor-in-interest of the respondents. It was this 33 decimals of land which was in dispute and

accordingly, the subject matter of the suits filed by the predecessor-in-interest of the parties against each other and which were ultimately resolved by this court by an order passed in SLP [C] No. 4263-65 of 1992, in the manner indicated hereinbefore. For this reason, in our view, the expression “rest of the land” can validly be interpreted to mean the balance of 33 decimals after deducting 6.5 decimals therefrom i.e. 26.5 decimals, because this court, when it passed the order in SLP (C) No. 4263-65 of 1992, it was deciding the dispute regarding 33 decimals of land and not 37 decimals or 39.5 decimals, wrongly assumed as 37 decimals. This view of ours is strengthened by the fact that the land appertaining to Holding No. 108, Dr. Girindra Sekhar Basu Road, Calcutta-39 was never the subject matter of dispute in either of the suits out of which the special leave petitions viz. SLP [C] No. 4263-65 of 1992 had arisen in this court. In this context, we are in agreement with the finding of the High Court that the land appertaining to Holding No. 108, Dr. Girindra Sekhar Basu Road, Calcutta-39 was the subject matter of dispute in another suit, being Title Suit No.3/1965, which also came to an end in this court in SLP Civil No. 7156 of 1982. Therefore, we are of

the view that the findings of the High Court, on the interpretation of the order of this court in SLP [C] No. 4263-65 of 1992, were prima facie not incorrect and in fact, the findings of the High Court were more plausible than the findings arrived at by the courts below, as noted hereinbefore. Having said this, we feel it proper to discuss yet another aspect of this matter. The contentions and the facts disclose that the order of this court in SLP [C] No. 4263-65 of 1992 is capable of being interpreted in three more ways, as detailed below:

- i. The total extent originally held by Ujir Ali and Bahar Ali was 39.5 decimals (wrongly assumed as 37 decimals) and therefore, the respondents are in possession of 6.5 decimals in Holding No. 108 and 6.5 decimals in Holding No. 108A i.e. in all 13 decimals and the appellants are in possession of 26.5 decimals in Holding No. 108A.*
- ii. The total extent was 37 decimals and though 33 decimals was sold and only 4 decimals was retained, the respondents continued in actual possession of 6.5 decimals instead of 4 decimals after the sale. Consequently, it was held that the respondents are entitled to 6.5 decimals (4 decimals in 108 and 2.5 decimals in 108A) and the appellants are entitled to the remaining extent of 30.5 decimals in 108A.*
- iii. The parties had assumed that the total extent was 37 decimals. As per the sale deed, 33 decimals were sold to S.A. Hossain and 4 decimals were retained by Ujir Ali and his brother. But as the actual extent was 39.5 decimals, the respondents were in possession of 6.5 decimals in Holding No. 108 and the appellants shall be entitled to 33 decimals in Holding No. 108A.*

15. From the above, it can be concluded that the order of this court in SLP [C] No. 4263-65 of 1992 is capable of being interpreted in various ways and therefore, it must be held that a triable issue had been raised by the respondent for which the only order that could be passed, on the application for injunction, was to direct the parties to maintain status quo as regards the character and nature of the suit properties till the disposal of the suit. If the parties are allowed to change the nature and character of the suit properties or to transfer the same before the suit is decided on evidence, it would be difficult for the court to decide the matter with third party interests having been created in respect of the suit properties. In our view, when the suit is still pending and an application for injunction is filed, it would be appropriate for us to direct the parties to maintain status quo, not only in respect of the transfer of the suit properties but also in respect of the possession thereof till the disposal of the suit. From the discussions made hereinabove, there cannot be any room for controversy that the court has to decide a fair and substantial question as to what would be the proper interpretation of the order of this court while deciding the suit on evidence and after

holding local inspection in respect of the same. Under these circumstances and at this stage, in our view, the matter for consideration would be as to where does the balance of convenience lie. Is it desirable to maintain status quo or should the appellants be allowed to dispossess or alter the character of the suit properties. It is well settled that the court will not refuse an injunction in a case of this nature so as to give the party against whom the injunction is sought an undue advantage over the party seeking the injunction. From the record, it appears that the appellant sought to change the nature and character of the suit properties by making constructions on the land. Therefore, it is indisputable that if the appellants 1 to 7 are allowed to proceed with the construction on the suit land, they will be placed in a far better position and would have an undue advantage over the respondents. In this state of affairs, we are of the view that the parties should be directed to maintain status quo in respect of the suit properties.

In **Gangubai Bablya Chaudhary and others** Vs. **Sitaram Bhalchandra Sukhtankar and others** [AIR 1983 SC 742], this court held that when a dispute arose in respect of the title of the suit land and the parties were found to be in possession of

the disputed land, an order of injunction restraining the defendant from putting up construction on the suit land would be justified as after construction, the situation might become irreversible by the time the dispute is decided, if an order of injunction is not granted.

16. In view of the above, we are, therefore, of the view that where different interpretations of the order of this court are available and the interpretation given by the High Court cannot be said to be totally incorrect, in that situation, the parties should be directed to maintain status quo in respect of the suit properties till the suit is decided. Under these circumstances, even if we are of the view that the High Court was wrong in interfering with the concurrent orders of the courts below which had rejected the application for injunction, even then, interference with the order of the High Court may not be necessary as we are of the view that justice of the case on facts does not require interference and in fact, by the impugned order, substantial justice has been done in the facts and circumstances of the case. In the light of the aforesaid discussion, we are of the view that in

the present case, admittedly, the balance of convenience and inconvenience would lie in favour of the plaintiffs/respondents in directing the parties to maintain status quo in respect of the suit properties, in as much as, a triable issue has been found by the High Court to go for trial and in the event, injunction or status quo is not granted during the pendency of the suit, the nature and character of the suit properties can be changed at the instance of the appellants or even third party interests can also be created. Accordingly, we are of the view that it would not be just and proper to interfere with the impugned order of the High Court in the exercise of our discretionary power under Article 136 of the Constitution.

17. For the reasons aforesaid, we are not inclined to interfere with the impugned order of the High Court directing maintenance of status quo in respect of the suit properties. However, we make it clear that the observations that have been made by us or the High Court shall not come in the way of the parties agitating before the trial Court at the time of disposal of the suit after evidence from both the sides is

adduced. In the event the written statement in the suit has not yet been filed by the Appellants, the same shall be filed within 8 weeks from the date of production of a copy of this order in the trial court. The Trial court is directed to dispose of the suit within one year from the date of filing of the written statement positively without granting any unnecessary adjournment to either of the parties.

18.The appeal thus fails and is hereby dismissed without any order as to costs.

NEW DELHI
MAY 14, 2008

.....J.
[TARUN CHATTERJEE]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3650./2008

(Arising out of Special Leave petition (C) No.16346/2005)

Shaikh Ali Hossain & Ors.

.....Appellant (s)

Versus

Sk. Showkat Ali & Anr.

..... Respondent (s)

J U D G M E N T

R. V. RAVEENDRAN J.,

I have carefully gone through the draft of the Judgment prepared by my noble brother Tarun Chatterjee J. Having giving my anxious consideration to it, I have to respectfully disagree.

2. The facts are given in detail in the Judgment of Brother Chatterjee J. Let me consider the undisputed facts. Premises No. 108 measuring 37 decimals, belonged to Ujir Ali Mistri (father of plaintiffs) and his brother

Bahar Ali Mistri. They sold 33 decimals out of the said property to their nephew S. A. Hossain (of whom defendants 1 to 7 are the LR.s.) under registered sale-deed dated 27.2.1948. On the application of S. A. Hossain, the portion (33 decimals) purchased by him was bifurcated and assigned a separate number identified as Premises No. 108A. More than a decade later, Title Suit No. 143/1961 was filed by Ujir Ali and LR.s. of Bahar Ali for a declaration that the sale-deed dated 27.2.1948 in favour of S.A.Hossain was obtained by fraud and misrepresentation and therefore invalid. The said suit was dismissed and title of S.A.Hossain was upheld. That decision attained finality in view of dismissal of the appeal and second appeal. Thereafter, S. A. Hossain filed Title Suit No.67/1971 asserting his title and possession in respect of premises No.108A measuring 33 decimals and sought permanent injunction to restrain the legal heirs of Ujir Ali and Bahar Ali from interfering with his possession. Counter suits were filed in Suit Nos. 189/1971 (for permanent injunction) and Title Suit No.421/1979 (for declaration of title by adverse possession) by the Legal heirs of Ujir Ali (widow, son and daughter). In Title Suit No.421/1979, S. A. Hossain was arrayed as the first defendant and the LR.s. of Bahar Ali as defendants 2 and 3 as by then they supported S. A. Hossain. By common judgment dated 26.8.1982 S.A.Hossain's suit for injunction was decreed and the suits filed

by LRs of Ujir Ali were dismissed. The trial court held that S.A.Hossain had proved his possession of 33 decimals in Premises No.108A and LRs of Ujir Ali had miserably failed to prove that they were in possession of Premises No.108A. The said judgment was affirmed in appeal by the Addl. District Judge, Alipur by common judgment dated 18.5.1984. The Second appeals filed by the LRs namely Ujir Ali were dismissed by the High Court by a common judgment dated 14.3.1991. The said common judgment was challenged by the LRs of Ujir Ali in Civil Appeal No.3983-85/1995 (arising out of SLP (C) No. 4263-65/1992). This Court disposed of the said appeals by judgment dated 24.3.1995, recording the submissions on both sides. LRs of Ujir Ali (appellants therein) admitted that S.A. Hossain (first respondent therein) had purchased 33 decimals from Ujir Ali and Bahar Ali. S. A. Hossain and other respondents in the said appeals confirmed that the LRs. of Ujir Ali (the appellants therein), were in possession of 6.5 decimals of land and that they were the owners of the said 6.5 decimals of land. The LRs of Ujir Ali (appellants therein) admitted that S. A. Hossain was in possession of the remaining land. This Court having recorded the said submissions disposed of the appeals with a direction that each party shall not disturb the possession of the other.

3. The plaintiffs in the present suit (LRs. of Ujir Ali), interpret the decision of this Court as holding that they (LRs of Ujir Ali) are entitled to 6.5 decimals out of 33 decimals sold to S. A. Hossain and that S.A.Hossain is therefore entitled to only the remaining 26.5 decimals. They therefore contend that in addition to the land retained by them (after sale of 33 decimals) which continues to bear Premises No.108, they are also entitled to 6.5 decimals out of Premises No.108A measuring 33 decimals. Plaintiffs also alleged that defendants 1 to 7 who were the LRs. of S. A. Hossain had entered into some deal with defendants 8 and 9 in regard to the entire extent of Premises No.108A including the 6.5 decimals owned and possessed by plaintiffs. On the said averments, the plaintiffs have sought a declaration that defendants did not have any right, title or interest in respect of the two suit properties, that is, part of Premises No.108A being 6.5 decimals out of 33 decimals (Schedule 'A' property) and Premises No.108 (Schedule 'B' property) and a permanent injunction restraining defendants from interfering with their possession.

4. On the other hand, the case of the defendants 1 to 7 (LRs. of S.A. Hossain) is that out of the total extent of 37 decimals in property No.108, Ujir Ali and his brother sold 33 decimals to S.A.Hossain in the year 1948;

that it was subsequently found that the actual extent of No.108 was 39.5 decimals; and that LR's of Ujir Ali and Bahar Ali were therefore in actual possession of 6.5 decimals (instead of 4 decimals) in Premises No.108 and S.A.Hossain was in possession of 33 decimals bearing No.108A. There were two rounds of litigation in regard to the 33 decimals sold to S. A. Hossain. The first round was by alleging that sale deed in favour of S.A.Hossain was void and the second round was on the basis of adverse possession of entire land sold to S.A. Hossain. S. A. Hossain succeeded in both rounds in all three courts. On both occasions, the title and possession of S.A.Hossain was upheld. In the second round the LR's of Ujir Ali brought the matter to this Court. When the appeals were finally heard by this Court, S. A. Hossain fairly confirmed before this Court that the extent of land in the possession of LR's of Ujir Ali was 6.5 decimals (and not 4 decimals, referring to Premises No.108) and that the extent of property in his possession was 33 decimals (Premises No.108A); that position was also confirmed by LR's of Ujir Ali; and that this Court recorded the said submissions and disposed of the appeals filed by the LR's of Ujir Ali, without examining the merits, as it found no reason to interfere with the decision of High Court, except to clarify that the extent held by LR's of Ujir Ali was 6.5 decimals. The effect of the decision of this Court dated

24.3.1995 was only to clarify that LR's of Ujir Ali were in possession of 6.5 decimals and not 4 decimals, and that the LR's of Ujir Ali were entitled to continue in possession of the said 6.5 decimals (in Premises No.108) as owners, and S. A. Hossain was entitled to continue in possession of 33 decimals (Premises No.108A) as owner. It was also contended that the 33 decimals owned and possessed by them (LR's of S. A. Hossain) and the 6.5 decimals owned and possessed by LR's of Ujir Ali were clearly demarcated and separated by compound walls and therefore, the question of LR's of Ujir Ali being in possession of any land in addition to 6.5 decimals in Premises No.108 did not arise. They submitted that the LR's of Ujir Ali were attempting to misread and misrepresent the judgment of this Court in Civil Appeal No.3983-85/1995 to grab an area of 6.5 decimals out of their 33 decimals in No.108A.

5. The order dated 24.3.2005 of this Court reads thus :

“We are happy to note that the parties have adopted a very fair stand in this Court. Admittedly the first respondent had purchased 33 decimals of land from their uncles Ujir Ali Mistri and Bahar Ali Mistri. It is also not in dispute that the appellants are in possession of 6.5 decimals of land. The respondents have fairly agreed that the appellants will be owners and to remain in possession and enjoyment in perpetuity of 6.5 decimals of land. The respondent shall not interfere with the aforesaid land. Equally, the appellant shall not interfere with the possession and enjoyment of rest of the land. This decision is in modification of the decree of the Trial Court in Suit No.67/71, Title Suit No.189/71 and 421/71. The decree of the Trial Court is accordingly modified. Both the parties are directed not to interfere

with the possession and enjoyment of respective lands. The appeals are disposed of accordingly. No costs.”

On the factual background and contentions, the order dated 24.3.1995 of this Court in Civil Appeal No.3983-85/1995 is capable of being interpreted in the following four different ways:

- (a) The total extent originally held by Ujir Ali and Bahar Ali was 39.5 decimals (wrongly assumed as 37 decimals) and plaintiffs are in possession of 6.5 decimals (No.108) and 6.5 decimals (out of Premies No.108A) in all 13 decimals and defendants (LRs of S. A. Hossain) are in possession of 26.5 decimals in Premises No.108A.
- (b) The parties had assumed that the total extent was 37 decimals. As per sale deed, 33 decimals were sold to S.A. Hossain and 4 decimals were retained by Ujir Ali and his brother. But as the actual total extent was 39.5 decimals, the plaintiffs were in possession of 6.5 decimals (Premises No.108) and S.A. Hossain was holding 33 decimals (Premises No.108A) (instead of plaintiffs holding 4 decimals and S.A. Hossain holding the remaining extent of 35.5 decimals).
- (c) The total extent held by Ujir Ali and Bahar Ali was 37 decimals and plaintiffs are in possession of 4 decimals in Premises No.108 and 6.5 decimals in Premises No.108A, in all 10.5 decimals and defendants are in possession of 26.5 decimals in Premises No.108A.
- (d) The total extent was 37 decimals and though 33 decimals was sold and only 4 decimals was retained, the plaintiffs continued in actual possession of 6.5 decimals instead of 4 decimals after the sale. Consequently, plaintiffs are entitled to 6.5 decimals

(in No.108) and the defendants are entitled to the remaining extent of 30.5 decimals (No.108A).

The plaintiffs (respondents herein) have put forth interpretation (a). The defendants (appellants herein) have put forth interpretation (b). Interpretations (c) and (d) arise as corollaries to interpretations (a) and (b) respectively, if the total extent is only 37 decimals and not 39.5 decimals. The question is which interpretation is correct.

6. A careful reading of the decision dated 24.3.1995 of this Court makes it clear that this Court merely confirmed that the area in the occupation of plaintiffs was 6.5 decimals and the area in the occupation of S.A.Hossain was 33 decimals. This Court used the words : "It is also not in dispute that the appellants are in possession of 6.5 decimals of land." It did not say that appellants were in possession of "6.5 decimals of land in Premises No.108A" or "6.5 decimals of land out of 33 decimals of land". The words 'rest of the land' used while referring to the land in possession of S. A. Hossain, when read in the context of the entire order and the subject matter of the dispute before this Court, clearly refer to the rest of the land after excluding 6.5 decimals out of the total original extent (which was assumed

to be 37 decimals but actually 39.5 decimals), and not rest of land after deducting 6.5 decimals from 33 decimals. The decision of this Court merely reiterated what was agreed, that is the LRs of Ujir Ali were entitled to 6.5 decimals. The interpretation put forth by plaintiffs that the decision of this Court had recorded that plaintiffs were holding 6.5 decimals in Premises No.108A in addition to 6.5 decimals in No.108, is without basis. Neither the wording of the decision nor the background in which the decision was rendered support plaintiffs' interpretation.

7. I may also refer to the following circumstances which favour the interpretation put forth by the appellants – defendants:

(i) If the title and possession in regard to 6.5 decimals in Premises No.108A was already decided in favour of plaintiffs by this Court by order dated 24.3.1995, and if plaintiffs were already in possession of 6.5 decimals in No.108A, in addition to the extent held in No.108 (as contended by plaintiffs), there was no need for plaintiffs to file a fresh suit (present suit) seeking declaration that defendants were not having any right, title or interest in 6.5 decimals in No.108A. All that they had to do was to seek the relief of injunction on the basis of the earlier decision.

(ii) While plaintiffs specified the extent of Schedule 'A' property as 6.5 decimals forming part of Premises No.108A, significantly, they have not

given the measurement or extent of Schedule 'B' property that is Premises No.108, which according to them, was the remainder of land after sale under deed dated 27.2.1948. They did not disclose whether the extent of Premises No.108 is 4 decimals, or 6.5 decimals, or more, or less. Only when defendants pointed out that the extent of Premises No.108 was 6.5 decimals, the plaintiffs submitted before the trial court that the extent of Premises No.108 was 6.5 decimals. It is too much of a coincidence that plaintiff retained 6.5 decimals in No.108 and also came into possession of an exactly similar extent of 6.5 decimals in No.108A.

(iii) The plaintiffs chose to seek a negative declaration that 'defendants have no right, title or interest in the suit properties' and not a positive declaration that plaintiffs were the owners in possession of the suit properties. The reason why they chose to seek such a negative prayer is obvious. Any positive prayer for declaration of their title would have been barred by principles of *res judicata*. The maintainability of a claim for such a negative declaration is also doubtful.

8. 33 decimals out of 37 decimals having been sold by Ujir Ali and Bahar Ali to S. A. Hossain, it is understandable as to how the plaintiffs, who are the legal heirs of Ujir Ali, could claim to be in possession of 6.5 decimals as remaining land and also claim 6.5 decimals out of the land sold, in all 13 decimals. The claim is apparently unjust. Plaintiffs are making a belated attempt to misinterpret the order of this Court dated 24.3.1995

taking advantage of the fact that it was not a detailed order. The interpretation sought to be placed by plaintiffs would virtually amount to rewriting the order of the court with a different content.

9. I am conscious of the fact that the suit is still pending and the matter has travelled to this Court in connection with an interim order. The appropriate course in the normal circumstances would have been to set aside the judgment of the High Court as unwarranted, without expressing any opinion on merits. But as the Judgment proposed by Chatterjee J., approves the findings recorded by the High Court, it became necessary to refer to what I consider to be the correct interpretation of this Court's order, as the entire matter depends upon the interpretation of the order of this Court in the earlier round of litigation.

10. Consequently, the only question that would really fall for decision by the trial court is whether plaintiffs are in possession of an area of 6.5 decimals or an area which is less than 6.5 decimals. If the total area of 108 and 108A is 37 decimals and if plaintiffs are in possession of an area which is less than 6.5 decimals, then plaintiffs will be entitled to 6.5 decimals and the defendants will be entitled to the remainder. That is, if the total area is

37 decimals and if the plaintiffs are in possession of only 4 decimals and if the LR's. of S.A.Hossain are in possession of 33 decimals, having regard to the decision of this Court, the plaintiffs will be entitled to 6.5 decimals and the LR's. of S.A.Hossain will be entitled to 30.5 decimals. On the other hand, if the extent already in the possession of plaintiffs is 6.5 decimals, then the LR's. of S.A.Hossain will be entitled to the entire remainder (which will be 30.5 decimals if the total extent is 37 decimals, or 33 decimals if the total extent is 39.5 decimals).

11. When the injunction application was argued before the trial court, the plaintiffs clearly admitted that the extent of Schedule 'B' property (Premises No.108] was 6.5 decimals and not 4 decimals. Trial court found that as the plaintiffs were in possession of 6.5 decimals and defendants were in possession of 33 decimals and there was no threat to the plaintiffs' possession of 6.5 decimals, plaintiffs were not entitled to the injunction sought for. In fact, the trial court examined the matter in detail, and did not find any triable issue at all. The appellate court concurred with the findings of the trial court and dismissed the appeal. The High Court while exercising the power under Article 227 of the Constitution of India interfered with the said concurrent findings and held that there was a triable issue in the suit.

The High Court also interpreted the order of this Court as holding that plaintiffs were entitled to 6.5 decimals out of 33 decimals in Premises No.108A and that defendants were entitled only to the remaining 26.5 decimals. I find that on the tenor and wording of the order of this Court and the factual background, such a finding was wholly unwarranted.

12. Grant or refusal of an injunction is within the judicial discretion of the trial court. In this Court, the trial court had considered the facts in detail and found that the plaintiffs were not in a position to make out a prima facie case and rejected the application. That order was affirmed in appeal. In the circumstances, the High Court in exercise of supervisory jurisdiction under Article 227, was not justified in interfering with the order. The High Court has re-examined the matter as if it was sitting in appeal over the orders of the trial court and appellate court and reached a different conclusion, which as noticed earlier is erroneous. On the facts and on proper interpretation of the order of this Court, the view taken by the High Court is not warranted and calls for interference.

13. I would therefore allow this appeal and set aside the order of the High Court, and restore the order of the trial court, as confirmed by appellate court rejecting the application for temporary injunction.

.....J
[R. V. Raveendran]

New Delhi;
May 14, 2008.

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 3650 OF 2008
(arising out of SLP(C)NO.16346 of 2005)

**SHAIKH ALI HOSSAIN & ORS.PETITIONERS/
APPELLANTS**
VERSUS

SK. SHOWKAT ALI & ANR.
RESPONDENTS

ORDER

**In view of difference of opinion, the Registry is directed to place this
matter before Hon'ble the Chief Justice of India for appropriate orders.**

.....J.
(TARUN CHATTERJEE)

.....J.
(R.V. RAVEENDRAN)

**New Delhi,
May 14, 2008.**