

Manoj and Another Vs. Chandrakishore and Others

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Court : Mumbai Nagpur

Decided On : Nov-28-2013

Judge : R.K. Deshpande

Appeal No. : Writ Petition No.1077 of 2012

Appellant : Manoj and Another

Respondent : Chandrakishore and Others

Judgement :

1. Rule, made returnable forthwith. Heard finally by consent of the learned counsels appearing for the parties.
2. The petitioners are the original plaintiffs, who have filed a suit for declaration that they are the owners of Shop No.169/1, admeasuring 220 sq. ft. in Survey No.18/1, Nazul Sheet No.7D of Tumsar, District Bhandara, and the defendants have no right to the said property. A decree for permanent injunction has also been claimed, restraining the defendants from disturbing the possession of the plaintiffs over the suit property. The plaintiffs have also filed an application Exhibit 5 for grant of temporary injunction restraining the defendants from disturbing their possession over the suit property. A further order of temporary injunction is also claimed restraining the defendants from executing the decree passed in Regular Civil Suit No.2 of 1996.

3. The respondents are the original defendant Nos.1 to 5. One Smt. Nandrani Devi, widow of Shalikram Chaurasia, along with the respondent No.1 Chandrakishore, the respondent No.3 Bhushankumar, the sons of said Shalikram and the respondent No.4 Ku. Vinita, a daughter of said Shalikram, were the owners of the suit property. The respondent No.1 Chandrakishore along with his daughter Smt. Kirti, the respondent No.2, filed Regular Civil Suit No.2 of 1996 under Section 6 of the Specific Relief Act, 1963 for restoration of possession of the suit property in which Smt. Nandrani Devi, the respondent No.3 Bhushankumar, the respondent No.4 Ku. Vinita were joined as the defendants. During the pendency of the said suit, the respondent No.3 Bhushankumar sold the suit property to the petitioners/plaintiffs by a registered sale-deed dated 29.5.1998. Hence, the petitioners/plaintiffs were also joined in Regular Civil Suit No.2 of 1996 as the party-defendant Nos.3A and 4 respectively.

4. Regular Civil Suit No.2 of 1996 was decreed for restoration of possession by the Trial Court on 20.3.2002. Civil Revision Application Stamp No.28336 of 2004 filed by the present petitioners challenging the decree passed by the Trial Court regarding restoration of possession, was dismissed by this Court by the judgment dated 22.11.2011. In the last para of the said judgment, it was observed by this Court that needless to say that if any of the parties file a suit on the basis of the title, none of the observations made by this Court or by the Trial Court shall come in his/her way.

5. Immediately thereafter on 3.12.2011, the present petitioners filed Regular Civil Suit No.43 of 2011 for declaration and permanent injunction, as pointed out in para 1 of this judgment. The application Exhibit 5 claiming an order of temporary injunction, as stated in para 2 above, filed in the said suit was dismissed by the Trial Court by its order dated 7.1.2012. The Appellate Court has dismissed Misc. Civil Appeal No.2 of 2012 filed by the present petitioners, by its judgment and order on 9.2.2012. Hence, both these judgments and orders are subject-matter of challenge in this petition. The petitioners are claiming an order of temporary injunction against the respondents, as is stated in para 1 above.

6. While rejecting the application for temporary injunction, the Trial Court recorded the finding that the petitioners/plaintiffs are in possession of the suit property on the basis of a registered sale-deed dated 2951998. Referring to the decision of this Court in the case of Mari Doddatamma Karkundi v. SantayaRamkrishna Pai, reported in (1922) 24 Bom LR 768, and the decision of Gujarat High Court in the case of Mohammad Husain Suleman Shaikh and another v. BatukbhaiWaljibhai and others, reported in AIR 1984 Gujarat 66, the Trial Court held that the judgment-debtor/ owner of the property is not debarred from institution of a suit and claiming an injunction restraining the decree-holder from execution of a decree for possession passed under Section 6 of the Specific Relief Act. However, a claim for temporary injunction was rejected, holding that the question of title over the suit property is not material, and what is material is the fact that the predecessors-in-title of the plaintiffs/petitioners have wrongly/illegally dispossessed the defendants/respondent Nos.1 and 2 and have sold the property to the petitioners/plaintiffs. It has been held that the petitioners/plaintiffs were having very well knowledge of the dispute, but have purchased the property and have taken the possession thereof. According to the Trial Court, such a conduct on the part of the petitioners and the respondent No.3 and 4 disentitle them to claim a equitable relief of injunction.

7. The Appellate Court has confirmed the findings recorded by the Trial Court, holding that such a suit based on the title seeking injunction on execution of decree for possession under Section 6 of the Specific Relief Act, is maintainable. Relying upon the decision of the Apex Court in the case of Sanjay Kumar Pandey and others v. GulbaharSheikh and others, reported in (2004) 4 SCC 664, it has been held that the remedy of a person unsuccessful in a suit under Section 6 of the Specific Relief Act is to file a regular civil suit establishing his title over the suit property and to recover the possession, notwithstanding the adverse decision in a suit under Section 6 of the said Act. It has also been held that the petitioners/plaintiffs were parties to Regular Civil Suit No.2 of 1996, and knowing fully well, they have purchased the suit property during the pendency of the suit. The Appellate Court has also noted the additional fact that the property was purchased by the petitioners/plaintiffs in violation of the order of status quo, which was operating in Regular Civil Suit No.2 of 1996. Thus, with all these findings, the

appeal has been dismissed.

8. After going through the judgments of both the courts below, I am of the view that though a reference is made to the well-settled principles for grant of injunction, viz. (i) prima facie case; (ii) balance of convenience; and (iii) irreparable loss, the Courts below have in fact not applied the said principles, but on the contrary, it has been held that the question of title is not material. Basically, the Court below have denied the relief of temporary injunction on the ground that there exists a decree for restoration of possession under Section 6 of the Specific Relief Act, 1963, and the defendants in the suit in question cannot be deprived of the fruits of such a decree.

9. Shri Muley, the learned counsel for the respondents, has invited my attention to Section 41(b) of the Specific Relief Act and has submitted that it is this provision, which the Courts below have invoked to reject the relief of temporary injunction. Hence, the question is whether the Courts below were right in refusing to protect the possession of the plaintiffs, by an order of temporary injunction, as claimed, merely because a decree for restoration of possession under subsection (1) of Section 6 of the Specific Relief Act needs to be executed, and there is a bar under Section 41(b) of the said Act to grant an injunction. The claim for an order of injunction needs to be rejected in view of Section 41(b) of the said Act. Before answering this question, the position of law needs to be seen in the light of the decisions cited before this Court.

10. In the case of Mari Doddamma Markundi v. SantayaRamkrishna Pai, reported in (1922) 24 Bom. L.R. 768, a suit was instituted to seek an injunction restraining the appellant therein from dispossessing him by enforcing the decree passed in Suit No.293 of 1917. There was a decree passed by the Court of Mamlatdar in possessory suit filed under Section 9 of the Specific Relief Act, 1877 for restoration of possession. The said decree could not be executed, because the respondent therein instituted the suit to establish his title to the land and to obtain an order of injunction. It was held that the respondent therein had established his title to the said land and the defendant was permanently restrained from obstructing the plaintiff's possession over the suit land on the strength of a decree

passed in a suit under Section 9 of the Specific Relief Act, 1877. Thus, the said decree was rendered inoperative and incapable of execution. The question was dealt with in para 4 of the said judgment, which is reproduced below :

4. It has been Urged in this second appeal that this decree offends against the provisions of section 56, Clause (b), of the Specific Relief Act. Now the decree passed in Suit No.293 of 1917 was clearly one contemplated by Section 9 of that Act, The object of that section is to discourage people from taking the law into their own hands, however good their title may be. (Krishnarav Yashwant v. Vasudev Apaji Ghotikar (1884) I.L.R. 8 Bom. 371, 375). It provides a summary and speedy remedy through the medium of the Civil Court for the restoration of possession to a party dispossessed by another, leaving them to fight out the question of their respective titles if they are so advised: Wali Ahmad Khan v. Ajudhia Kandu (1891) I.L.R. 13 All. 537, 562. An order or decree passed under that section is not open to appeal or to review at the instance of the defeated party; and the section expressly provides that nothing contained therein shall bar any person from suing to establish his title to such property and to recover possession thereof. It was therefore competent to the respondent to institute this suit to establish his title to the lands in dispute; and being in possession thereof, the only further relief which he could seek was an injunction to restrain the appellant from disturbing his possession. The terms of the decree passed by the lower Court are, in my opinion, unobjectionable.

11. In order to find out whether the law laid down in the aforesaid decision can be made applicable to the facts of this case, the provisions of Sections 9 and 56(b) of the Specific Relief Act, 1877 (hereinafter referred to as the SR Act of 1877) need to be compared with the provisions of Sections 6 and 41(b) of the Specific Relief Act, 1963 (hereinafter referred to as the SR Act of 1963). Hence, the comparative provisions are reproduced below :

Section 9 of the Specific Relief Act, 1877:	Section 6 of the Specific Relief Act, 1963
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<p>Suit by person dispossessed of immovable property. - If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof notwithstanding any other title that may be set up in such suit. Nothing in this section shall bar any person from issuing to establish his title to such property and to recovery possession thereof.</p> <p>No suit under this section shall be brought against the Central Government or any State Government.</p> <p>No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed</p>	<p>Suit by person dispossessed of immovable property. -</p> <p>(1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession there-of, notwithstanding any other title that may be set up in such suit.</p> <p>(2) No suit under this section shall be brought(a) after the expiry of six months from the date of dispossession; or (b) against the Government.</p> <p>(3) No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed. (4) Nothing in this section shall bar any person from suing to establish his title to such property and to recovery possession thereof.</p>
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<p>Section 56(b) of the Specific Relief Act, 1877 :</p> <p>Injunction when refused. An injunction cannot be granted(b) to stay proceedings in a Court not subordinate to that from which the injunction is sought.</p>	<p>Section 41(b) of the Specific Relief Act, 1963:</p> <p>Injunction when refused - An injunction cannot be granted- (b) to restrain any person from instituting or prosecuting any proceeding in a Court not subordinate to that from which the injunction is sought.</p>
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Bare perusal of the comparative provisions reveals that the suit under Section 9 of the SR Act of 1877 can be treated as a suit under Section 6 of the SR Act of 1963. There is no difference in the substance of the language of both these provisions.

12. In view of the aforesaid decision, it has to be held that the object of subsection (1) of Section 6 of the SR Act of 1963 is to discourage people from taking the law into their own hands, however good their title may be. It provides a summary and speedy remedy through the medium of the Civil Court for the restoration of possession to a party dispossessed by another, leaving them to fight out the question of their respective titles, if they are so advised. An order or decree passed under subsection (1) of Section 6 of the SR Act of 1963 is not open to an appeal or review at the instance of a defeated party. Subsection (4) of Section 6 of the said Act expressly provides that nothing contained therein shall bar any person from suing to establish his title to such property and to recover possession thereof. It thus saves a right of a person unsuccessful in a suit under subsection (1) of Section 6 of the said Act to establish his title to such property and to recover the possession thereof. The plaintiffs were, therefore, competent to institute the suit in question as contemplated under subsection (4) of Section 6 of the said Act to establish their title to the property, irrespective of the fact that there was a decree passed against them under subsection (1) of Section 6 of the said Act.

13. In the decision of the Apex Court in the case of Cotton Corporation of India Limited v. United Industrial Bank Limited and others, reported in AIR 1983 SC

1272, the provision of Section 56(b) of the SR Act of 1877 was compared with the provision of Section 41(b) of the SR Act of 1963. It has been held that keeping in view the judicial interpretation placed by the Courts on Section 56(b), the Legislature has materially altered the language of the succeeding provision enacted in Section 41(b) of the SR Act of 1963. It has further been held that the language has made it clear that an injunction cannot be granted to restrain any person and it takes care of injunction acting in personum from instituting or prosecuting any proceeding in a Court not subordinate to that from which injunction is sought.

14. Shri Muley, the learned counsel for the respondents, has invited my attention to the following portion in para 7 of the said decision, which is reproduced below :

7. ... Section 41(b) denies to the Court the jurisdiction to grant an injunction restraining any person from instituting or prosecuting any proceeding in a Court which is not subordinate to the Court from which the injunction is sought. In other words, the Court can still grant an injunction restraining a person from instituting or prosecuting any proceeding in a Court which is subordinate to the Court from which the injunction is sought. As a necessary corollary, it would follow that the Court is precluded from granting an injunction restraining any person from instituting or prosecuting any proceeding in a Court of coordinate or superior jurisdiction. This change in language deliberately adopted by the Legislature after taking note of judicial vacillation has to be given full effect.

It is urged on the basis of the above observations that the plaintiffs are not entitled to an order of injunction in terms of Section 41(b) of the SR Act, 1963 and granting of such injunction would amount to restraining a person from instituting or prosecuting the execution proceedings in a Court of a coordinate jurisdiction.

15. No doubt that under Section 41(b) of the SR Act of 1963, an order of injunction cannot be granted to restrain any person from instituting or prosecuting any proceeding in a Court not subordinate to that from which the injunction is sought. The principles laid down by the Apex Court in the aforesaid decision cannot be disputed. It was a case where the Division Bench of this Court had allowed the appeal and issued interim injunction restraining the Corporation from presenting a

winding-up petition. The question was whether the Corporation can be restrained by an injunction of a Court from presenting a winding-up petition against the Bank. The High Court had taken a view that it has such powers in view of the provisions contained in Order XXXIX of the Civil Procedure Code read with Section 37 of the SR Act of 1963, or in exercise of the inherent powers of the Court under Section 151 of the Civil Procedure Code. The Apex Court set aside the decision of the High Court and allowed the appeal. The Court, in the said judgment, was, however, not dealing with the question of granting an injunction in a suit based upon title to restrain the defendants from enforcing a decree passed under subsection (1) of Section 6 of the SR Act of 1963 for restoration of possession. The ratio laid down in the said decision cannot, therefore, be applied to the facts and circumstances of the present case.

16. The decision of this Court in the case of Mari Doddamma Markundi, cited supra, has been followed by the Gujarat High Court (Shri M.B. Shah, J., as he then was) in the case of Mohammad Hussain Suleman Shaikh and another v. BatukbhaiValjibhai and others, reported in AIR 1984 Gujarat 66, with approval. Para 4 of the said decision, which considered the decision of this Court, being relevant, is reproduced below:

4. In the case of Mari Doddamma Markundi v. Santaya Ram Krishna Pai Kollé, AIR 1922 Bom 216, the Court has held that the order or decree which is passed under S.9 of the Specific Relief Act (now S.6 of the Specific Relief Act, 1963) is not open to appeal or to review at the instance of the defeated party and the section expressly provides that nothing contained therein shall bar any person from going to establish his title to such property and to recover possession thereof. There the appellant had brought Suit No.293/17 in the Court of the Subordinate Judge for restoration of possession under S.9 of the Specific Relief Act and a decree was passed in his favour. But before he could execute the said decree, the respondent of that case instituted a suit to establish his title to the lands in dispute and to obtain an injunction to restrain the appellant from dispossessing him by enforcing the decree passed in Suit No.293/17. Rejecting the contention of the appellant the Court held as under :-

It was therefore competent to the respondent to institute this suit to establish his title to the lands in dispute; and being in possession thereof, the only further relief which he could seek was an injunction to restrain the appellant from disturbing his possession. The terms of the decree passed by the lower Court are, in my opinion, unobjectionable.

The Court further held that the sole object and purpose of the suit would be to obtain a reversal of the judgment and decree which is passed in Suit No.293/17 treating it as of a summary nature.

It has been held in the said decision that the sole object and purpose of the suit would be to obtain a reversal of a judgment and decree, which is passed in Suit No.293/17, treating it as of a summary nature.

17. In para 6 of the said decision, it is held as under :

6. In view of this settled legal position it is clear that the plaintiffs' suit for declaration of their title to the suit property and consequential relief of injunction is maintainable. However, while granting interim injunction the Court is required to consider all the relevant facts i.e. prima face case, balance of convenience and irreparable injury to either party. The learned Judge has not decided the appellants' case on merits. He has held that the appellants were not having prima facie case because the decree was passed in summary suit. He further held that there cannot be any balance of convenience in favour of the appellants because the decree was passed in favour of respondents Nos. 1 and 2. The learned Judge has not decided the prima facie case on the documents which were produced before him and also the interim injunction application on its merits. The question whether on facts the appellants were entitled to an interim injunction of the kind prayed for is entirely a different matter. The Court would be required to consider by applying its mind whether the appellants have a prima facie case and whether balance of convenience is in their favour and also may consider the judgment and decree passed against the appellants as a most relevant piece of document, but at the same time the Court is required to decide it on merits after considering the documentary evidence produced and affidavits produced by the parties. As the trial Court has not applied its mind to the facts of the case, it would be necessary

to send back this case to the trial Court for determining it on merits.

It is thus apparent that merely because there is a decree passed under subsection (1) of Section 6 of the SR Act of 1963, that would not prevent the Court from passing an order of temporary injunction restraining the defendants from executing the decree in a suit based upon the title. Irrespective of the fact that there is a decree passed under subsection (1) of Section 6 of the SR Act of 1963 for restoration of possession, the Court is required to consider all the relevant facts, viz. (i) prima facie case, (ii) balance of convenience; and (iii) irreparable loss. While considering the cumulative effect of the facts on record, the Court may consider the judgment and decree passed against the petitioners as a relevant piece of document, but at the same time, the Court is required to decide it on merits after considering the documentary evidence produced and the affidavits filed.

18. The Division Bench of this Court in the case of *Syndicate Bank v. East India Hotels Ltd.*, reported in 2005(1) Bom.C.R. 514, the earlier decision of this Court in the case of *Mari Doddamma Markundi's case*, cited *supra*, has been followed. Para 46 of the said decision is relevant and it is reproduced below :

46. It was contended that the right of the defendant to have possession of the premises was recognised by the decree passed by this Court in the suit filed under section 6 of the Specific Relief Act and, therefore, the present suit which in effect seeks to recover legal possession of the suit premises from the defendant can be filed only in the Court of Small Causes. There is no merit in this contention. As stated earlier, in section 6(1) suit the decree is passed in a, summary manner without going into the legal rights of the parties and as a matter of fact that was not gone into. That the decree passed in summary manner under section 6(1) can be defeated by establishing the legal right of possession based on title over the said property by filing the suit under section 6(4) seems to be the settled legal position. If any decision is needed on this point, we may refer to the decision of this Court in the case of *M.D. Markundi (supra)*. Therefore, the entitlement of the defendant under the decree passed in section 6(1) does not necessarily mean that the defendant has legal right to the property. On the other hand the plaintiff being

owner in possession of the property and entitled to remain in possession can maintain the suit under section 6(4) of the Specific Relief Act and seek declaration of his title and injunction for restraining the defendant from executing his decree. Such suit obviously is not covered by section 41 of the Presidency Small Cause Courts Act triable by the Small Causes Court. Rather that suit is maintainable in this Court.

It has thus been held that in a suit under subsection (1) of Section 6 of the SR Act of 1963, the decree is passed in a summary manner without going into the legal rights of the parties and as a matter of fact that was not gone into. It has further been held that the decree passed in a summary manner under subsection (1) of Section 6 can be defeated by establishing the legal right of possession based on title over the suit property by filing the suit under subsection (4) of Section 6 of the said Act seems to be the settled legal position. It has been held that the plaintiff being the owner and in possession of the property, is entitled to remain in possession and can maintain a suit under subsection (4) of Section 6 of the said Act seeking declaration of his title and injunction for restraining the defendant from executing his decree.

19. In the decision the case of Sanjay Kumar Pandey and others v. Gulbahar Sheikh and others, reported in (2004) 4 SCC 664, the Apex Court was dealing with a suit under Section 6 of the SR Act of 1963, wherein a decree was passed. In a revision filed under Section 115 of the Civil Procedure Code, the High Court set aside the decree passed by the Trial Court and dismissed the suit; against which, the matter was before the Apex Court. In the light of these facts, the Apex Court has held in para 4 of its decision as under :

4. A suit under Section 6 of the Act is often called a summary suit inasmuch as the enquiry in the suit under Section 6 is confined to finding out the possession and dispossession within a period of six months from the date of the institution of the suit ignoring the question of title. Subsection (3) of Section 6 provides that no appeal shall lie from any order or decree passed in any suit instituted under this section. No review of any such order or decree is permitted. The remedy of a person unsuccessful in a suit under Section 6 of the Act is to file a regular suit

establishing his title to the suit property and in the event of his succeeding he will be entitled to recover possession of the property notwithstanding the adverse decision under Section 6 of the Act. Thus, as against a decision under Section 6 of the Act, the remedy of unsuccessful party is to file a suit based on title. The remedy of filing a revision is available but that is only by way of an exception; for the High Court would not interfere with a decree or order under Section 6 of the Act except on a case for interference being made out within the well-settled parameters of the exercise of revisional jurisdiction under Section 115 of the Code.

Thus, it has been held that the remedy of a person unsuccessful in the suit under Section 6 of the SR Act of 1963 is to file a regular suit establishing his title to the suit property and in the event of his succeeding, he will be entitled to recover the possession of the property, notwithstanding the adverse decision under Section 6 of the said Act. It was not a case where an order of injunction was passed or refused restraining the defendants either from disturbing the possession of the plaintiffs over the suit property, or from executing the decree passed under Section 6 of the said Act in a suit claiming title to the suit property. The aforesaid observations are made in a case arising out of a suit filed under subsection (1) of Section 6 of the said Act, whereas, in the present case, it is a suit based on title to the suit property. The ratio of the said decision cannot be invoked in the facts of this case.

20. Keeping in view the law laid down in the aforesaid decisions, it has to be held as under :

(i) The suit under subsection (1) of the SR Act of 1963 is of a summary nature claiming the restoration of possession based upon previous possession and subsequent dispossession without consent and otherwise than in due course of law and ignoring the question of title.

(ii) A decree passed in a summary manner under subsection (1) of Section 6 of the SR Act of 1963 can be defeated by establish the legal right of possession based upon title over the property by filing a suit under subsection (4) of Section 6 of the said Act, and the plaintiff, upon establishing a prima facie case that he is the owner and in possession of the property, shall be entitled to protect his possession

in a suit filed under subsection (4) of Section 6 by claiming an injunction restraining the defendant from executing such a decree passed under subsection (1) of Section 6 of the said Act.

(iii) The sole object and purpose of the suit under subsection (4) of Section 6 would be to obtain a reversal of the judgment and decree passed in a summary suit under subsection (1) of Section 6 of the said Act, and the provision of Section 41(b) of the said Act would not be applicable even if a Court from which an injunction is sought is a Court of coordinate jurisdiction to one which has passed a decree under subsection (1) of Section 6 of the said Act.

(iv) The Court empowered to grant a decree for possession of the suit property and a permanent injunction restraining the defendant from interfering with his possession over the suit property on the basis of title, is competent to grant an order of temporary injunction restraining the defendant from interfering with the possession of the plaintiff over the suit property upon establishing prima facie case, balance of convenience, and irreparable loss.

(v) If on the date of filing of the suit based upon title, the plaintiff claims to be in possession of the suit, and an order of permanent injunction restraining the defendant from disturbing his possession is claimed, then there would be no question of claiming a decree for possession of the suit, but an order of temporary injunction can be claimed in such a suit to restrain the defendant from interfering with his possession on the basis of a decree passed under subsection (1) of Section 6 of the SR Act of 1963.

21. The Appellate Court has held that the property was purchased by the petitioners/plaintiffs in violation of the order of status quo, which was operating in Regular Civil Suit No.2 of 1996. This was not the finding recorded by the Trial Court. With the assistance of the learned counsels for the parties, I have gone through the documents placed on record. Exhibit 42 was the application for grant of time to file reply filed by the original defendant No.3 Bhushankumar. The Court granted time subject to maintenance of status quo as on that date till filing of the reply on Exhibit 28. Again on 29/9/1997, the application was filed for grant of time to file reply at Exhibit 43, filed by the defendant No.2, and the Court passed an order

granting time subject to maintenance of status quo as on that date till filing of the reply on Exhibit 28. The reply was filed by the defendant No.2 on 30.12.1997, and thereafter there is no order passed by the Trial Court either granting fresh order of status quo. The property was purchased by the petitioners/plaintiffs by a registered sale deed dated 29.5.1998, and on that date, the order of status quo was not operating. It stood vacated on the date of filing of reply on 30.12.1997 as per the order dated 29.9.1997 passed by the Trial Court. The defendants did not bother either to get the said order of status quo extended from 30.12.1997 till the date of executing the registered sale-deed on 29.5.1998. In view of this, the Appellate Court has committed an error of fact apparent on the face of the record in holding that the petitioners/plaintiffs purchased the property in violation of the order of status quo.

22. For the reasons stated above, the judgments and orders passed by the Courts below cannot be sustained. The same will have to be quashed and set aside and the matter will have to be remitted back to the Trial Court to decide the application at Exhibit 5 for grant of temporary injunction afresh by applying the well-settled principles of law, viz. (i) prima facie case, (ii) balance of convenience, and (iii) irreparable loss.

23. In the result, the petition is allowed. The judgment and order dated 712012 passed by the learned Civil Judge, Junior Division, Tumsar, below Exhibit 5 in Regular Civil Suit No.43 of 2011 along with the judgment and order dated 922012 passed by the learned District Judge¹, Bhandara, in Misc. Civil Appeal No.2 of 2012, are hereby quashed and set aside. The matter is remitted back to the Trial Court to decide the application at Exhibit 5 afresh, keeping in view the observations made by this Court.

24. Rule is made absolute in above terms. No order as to costs.

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