



2025 INSC 651

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No(s). OF 2025
ARISING OUT OF SLP (C) No(s). 37012-37013 OF 2013

MAHENDRA MAGRURAM GUPTA & ANR. ...APPELLANT(S)

VERSUS

RAJDAI SHAW & ORS. ...RESPONDENT(S)

O R D E R

1. Leave granted.
2. The short facts necessary for our purpose are that three brothers namely, Mr. Magruram Chotanki Gupta, Mr. Deepnarayan Chotanki Gupta and Mr. Baburam Chotanki Gupta were co-tenants of the suit property. The appellants are descendants of Mr. Magruram Chotanki Gupta while respondent no. 1 is the descendant of Mr. Deepnarayan Chotanki Gupta. The appellants' case is that by a notarised affidavit dated 22.02.1990, Mr. Deepnarayan Chotanki Gupta (respondent no. 1's predecessor) transferred his rights in the tenanted premises to Mr. Magruram Chotanki Gupta, i.e., their predecessor-in-interest. Subsequently, after Mr. Deepnarayan's death, his widow Smt. Antadevi signed a

declaration dated 18.04.1998 relinquishing her rights in the suit property in favour of appellant no. 1.

3. Relying on these documents, the appellants/ plaintiffs filed a suit for declaration and permanent injunction, in which their prayer for interim relief of temporary injunction came to be dismissed by the Trial Court on 21.12.2012. In appeal against this order, the High Court by the order impugned herein virtually dismissed the suit. Before advertng to the reasoning adopted by the High Court for virtually dismissing the suit while considering an application for injunction, we will first reproduce the relevant portion of the prayers in the suit¹ filed by the appellants before the Bombay City Civil Court;

“(a) This Hon’ble Court be pleased to declare that the notarized Agreement dated 22.02.1990 executed by Shree Deepnarayan Chotanki Gupta in favour of the Plaintiff No.1’s father Mr. Manguram Chotanki Gupta is valid, legal and the same is binding upon the Defendant No.1 and/or anyone claiming through/for and on behalf of the Defendant No.1;

(b) This Hon’ble Court be pleased to declare that the notarized Agreement dated 18.04.1998 executed by Smt. Antadevi in favour of the Plaintiff No.1 is valid, legal and the same is binding upon the Defendant No.1 and/or anyone claiming through/for and on behalf of the Defendant No.1;

(c) The Defendant Nos.1 to 6 be restrained by an order of permanent perpetual injunction from dispossessing the Plaintiffs from Suit premises viz. Shop No.5 Bazarang Krupa Building situated at 220-222, N.M. Joshi Marg, Parel, Mumbai - 400 013;

¹ Civil Suit (L) No. 2217 of 2012.

(d) The Defendant Nos.1 to 6 be restrained by an order of permanent perpetual injunction from disturbing Plaintiffs continuous, peaceful and uninterrupted actual physical possession of the Suit premises viz. Shop No.5 Bajarang Krupa Building situated at 220-222, N.M. Joshi Marg, Parel, Mumbai - 400 013;

(e) The Defendant Nos.1 to 6 and/or anyone claiming through/for and on behalf of the Defendant Nos. 1 to 6 be restrained from creating a third party interests of whatsoever in nature viz. sale, gift, will, exchange, mortgage, lease or otherwise in respect of the Suit premises viz. Shop No.5 Bajarang Krupa Building situated at 220-222, N.M. Joshi Marg, Parel, Mumbai - 400 013.”

4. It is also relevant to note that respondent no. 1 also instituted his own suit² before the High Court against the appellants for recovery of possession, permanent injunction, and mesne profits with respect to the same property.

5. While it is not necessary to refer to the reasoning adopted by the Trial Court in denying the grant of interim relief to the appellants, we will refer to certain portions of the impugned order which are not only inconsistent with one another but are also inappropriate and contrary to law.

6. While recording the submission of respondent no. 1, who is defendant no. 1 in the appellants’ suit, that he will not interfere with the possession of the appellants without an order or decree in the suit for possession instituted by him, the High Court observed:

“2. The possession could be protected until respondent No.1 followed due legal process. The respondent No.1 has followed due legal process by filing Suit No.443 of 2013 in this Court. The respondent

² Suit No. 443 of 2013.

No.1 cannot dispossess the appellants/plaintiffs until respondent No.1 obtains an order or decree in his suit. Mr. Sanglikar on behalf of respondent No.1 confirms this position. He states on behalf of respondent No.1 that respondent No.1 shall not dispossess the appellants/plaintiffs and shall not create any third party right or interest in the suit shop except under order or decree of this Court...”

7. However, following recording of the admission or a concession by respondent no. 1, the High Court came to an extraordinary conclusion that certain prayers in the suit have therefore become infructuous. The later portion of the above extracted paragraph of the High Court, which is a complete non sequitur reads as follows:

“Upon that statement the suit with regard to the protection of possession becomes infructuous as the reliefs granted in terms of prayers (c), (d) and (e) in the suit”.

8. The High Court also came to the conclusion that defendant nos. 2 to 6 have accepted that defendant no. 1 is the owner and as such they cannot dispossess the appellants/ plaintiffs pending disposal of respondent no. 1’s suit for possession. For this reason, the High Court reiterated its conclusion that an injunction must be granted in favour of the appellants for the following reason;

“3. The appellants/plaintiffs have also sued other members of the family as defendant Nos. 2 to 6. Defendant Nos. 2 to 6 are not before this Court. Defendant Nos. 2 to 6 in paragraph 5 of the affidavit in reply filed in the trial Court have accepted that the defendant No. 1 is the owner of the suit shop. Hence defendant Nos. 2 to 6 also cannot dispossess the appellants/plaintiffs pending the due legal process initiated by defendant No. 1 by filing the aforesaid Suit No. 443 of 2013. That protection must be granted and continued in favour of the appellants/plaintiffs.”

9. The High Court then comes to a strange conclusion that the agreements dated 22.02.1990 and 18.04.1998, relied on by the appellants for a declaratory relief, cannot be taken on record as they are unregistered and an order or decree cannot be granted in appellants' favour in view of Section 49 of the Registration Act, 1908. The relevant portion of the order is as follows:

“4. The appellants/plaintiffs have also sued for declaration that a notarized unregistered agreement dated 22nd February, 1990 and a notarized unregistered agreement dated 18th April, 1988 are valid, legal and binding upon the defendant No. 1. The agreements are admittedly unregistered. They fall within the mischief of Section 49 of the Registration Act, 1908. No decree or order in that behalf can be granted. The suit as filed would require the Court to dismiss it with regard to the reliefs under prayers (a) & (b).”

10. The above referred conclusion was completely unwarranted. There was no occasion for the High Court to consider the two documents while deciding an application for interim relief. The legality, validity, and admissibility of those documents were matters to be considered in the suit during trial. The relevant portion of the order passed by the High Court is as follows:

“5. Consequently the impugned order of the learned Judge, City Civil Court, Bombay dated 21st December, 2012 dismissing the Notice of Motion of the appellants/plaintiffs is set aside. Under the provision contained in Order 41 Rule 33 of the CPC further order in the suit is passed as follows:

The suit in terms of prayers (a) & (b) stands dismissed. Upon the statement of the Advocate for defendant No.1/respondent No.1 that respondent No.1 shall not dispossess the plaintiffs except under the order or decree of this Court in Suit No.443 of 2013, the suit in terms of prayers (c), (d) & (e) stands decreed in terms of the statement which is accepted by this Court, as defendant No.1 in the suit has followed due legal process.”

11. As is evident from the above, in the first part of its order, the High Court reversed the finding of the Trial Court and granted injunction. To this extent there is no problem, particularly in view of the statement or concession of respondent no.1/defendant no.

1. In the later part however, the High Court dismissed prayers (a) and (b) in the appellants' suit and then proceeded to direct that the other prayers in the suit filed by the appellants, namely prayers (c), (d), and (e), should now be considered in the suit filed by respondent no. 1/defendant no. 1 for recovery of possession.

12. In an appeal to the High Court against the order of the Trial Court refusing to grant injunction pending disposal of the suit, the High Court could not have dismissed the substantive portion of the suit itself and direct that the remaining part of the suit be agitated in a suit filed by the defendant. The approach adopted by the High Court is completely illegal and unsustainable in law.

13. In view of the above, we allow the appeals, set aside the judgment and order dated 14.08.2013 by the High Court in Appeal from Order No. 476 of 2013 with Civil Application No. 581 of 2013, and restore the suit filed by the appellants in Civil Suit (L) No. 2217 of 2012 filed before the Bombay City Civil Court to its original number. Pending disposal of this suit, there shall be a direction

restraining the respondents-defendants from dispossessing the appellants.

14. We also clarify that we have not expressed any opinion on the merits of the matter.

15. No order as to costs.

16. Pending applications, if any, stand disposed of.

.....J.
[PAMIDIGHANTAM SRI NARASIMHA]

.....J.
[JOYMALYA BAGCHI]

**NEW DELHI;
MAY 08, 2025**