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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13117 OF 2022

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| 1. | Chandrakant Kailas Pardeshi
Age – 50 years, Occ – Business
R/o Bhadgaon Road,
In front of Punsu Complex,
Chalisgaon, Taluka – Chalisgaon
District – Jalgaon | PETITIONERS |
| 2. | Rekhabai Suresh Pardeshi
Age – 48 years, Occ – Household | |
| 3. | Kaveri Suresh Pardeshi
Age -3 0 years, Occ – Education | |
| 4. | Shital Suresh Pardeshi
Age – 28 years, Occ – Education | |
| 5. | Rahul Suresh Pardeshi
Age – 27 years, Occ – Business
All R/o Bhadgaon Road,
Gorakhnath Workshop
Chalisgaon, Taluka – Chalisgaon
District – Jalgaon | |
| 6. | Kishor Kailas Pardeshi
Age – 46 years, Occ – Business
R/o Bhadgaon Road,
In front of Punsu Complex,
Chalisgaon, Taluka – Chalisgaon
District – Jalgaon | |
| 7. | Nita Mohan Mistari
Age – 52 yeas, Occ – Household
R/o Hirapur Road,
Siddhivinayak Housing Society,
Chalisgaon | |

VERSUS

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|----|------------------------|-------------|
| 1. | Vikas Chaturbhuj Bafna | RESPONDENTS |
|----|------------------------|-------------|

Age – 52 years, Occ – Business
R/o Manorama Ganj,
Geeta Bhavan, Near Post Office
Indore, District – Indore
State 0- Madhya Pradesh

2. Shyam Chaganrao Deshmukh
Age – 57 years, Occ – Agri & Business
R/o Hudco Parisar, Chalisgaon
Taluka – Chalisgaon, District – Jalgaon
3. Unmesh Balkrishna Patil
Age – 47 years, Occ – Agri and Business
R/o Dhule Road, Behind College
Chalisgaon, Taluka – Chalisgaon]
District – Jalgaon
4. Ishwar Amarsing Patil,
Age – 57 years, Occ – Agri and Business
R/o Adarsh Colony,
Behind College, Dhule Road
Chalisgaon, Taluka – Chalisgaon
District – Jalgaon
5. Bharat Digambar Dayma
Age – 37 years, Occ – Agri and Business
R/o Bhadgaon Road, Chalisgaon
Taluka – Chalisgaon, District – Jalgaon
6. Sandesh Walmik Yeole
Age – 37 years, Occ – Business & Developer
R/o Phule Colony, Bhadgaon Road
Chalisgaon, Taluka – Chalisgaon,
District – Jalgaon

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Mr. P. R. Katneshwarkar h/f Mr. Abhishek C. Deshpande,
Advocate for petitioners

Mr. M. S. Karad, Advocate for respondents No.2 to 5

Mr. R. N. Dhakane h/f Mr. N. B.Tambade, Advocate for
respondent No.6

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WITH
WRIT PETITION NO.13114 OF 2022

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| <ol style="list-style-type: none">1. Chandrakant Kailas Pardeshi
Age – 50 years, Occ – Business
R/o Bhadgaon Road,
In front of Puns Complex,
Chalisgaon, Taluka – Chalisgaon
District – Jalgaon2. Rekhabai Suresh Pardeshi
Age – 48 years, Occ – Household3. Kaveri Suresh Pardeshi
Age -3 0 years, Occ – Education4. Shital Suresh Pardeshi
Age – 28 years, Occ – Education5. Rahul Suresh Pardeshi
Age – 27 years, Occ – Business
All R/o Bhadgaon Road,
Gorakhnath Workshop
Chalisgaon, Taluka – Chalisgaon
District – Jalgaon6. Kishor Kailas Pardeshi
Age – 46 years, Occ – Business
R/o Bhadgaon Road,
In front of Puns Complex,
Chalisgaon, Taluka – Chalisgaon
District – Jalgaon | <p>PETITIONERS</p> |
|--|---------------------------|

VERSUS

- | | |
|--|---------------------------|
| <ol style="list-style-type: none">1. Samarth Land and Developer,
Through Sandesh Walmik Yeole
Age - 37 years, Occ – Business & Developer
R/o Phule Colony, Bhadgaon Road
Chalisgaon, Taluka – Chalisgaon,
District – Jalgaon2. Ghanshyam Ramchandra Pardeshi
Age – 72 years, Occ – Business | <p>RESPONDENTS</p> |
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R/o Bhadgaon Road, Chalisgaon
Taluka – Chalisgaon, District – Jalgaon

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Mr. P. R. Katneshwarkar h/f Mr. Abhishek C. Deshpande,
Advocate for petitioners

Mr. R. N. Dhakane h/f Mr. N. B. Tambade, Advocate for
respondent No.1

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 31st JULY, 2023

ORDER :

1. Since, both these petitions raise similar questions of law and fact between the same parties, they were heard together and are being decided by this common order.
2. These petitions, filed under Article 227 of the Constitution of India, challenge orders passed by learned Civil Judge, Senior Division, Chalisgaon, below Exhibit-6 in Special Civil Suits No.33 of 2022 and No. 153 of 2021, confirmed by learned District Judge, Jalgaon in Miscellaneous Civil Appeal No. 52 of 2022 and 51 of 2022, respectively.
3. Petitioners filed Special Civil Suit No.33 of 2022 for declaration of ownership, on the basis of adverse possession and for perpetual injunction restraining the defendants from disturbing peaceful possession of the plaintiffs over the suit property. Along with the suit, the petitioners have filed

application Exhibit-6, seeking temporary injunction. The defendants opposed the suit and temporary injunction application, by filing written statement. The Trial Court rejected the application for temporary injunction, by order dated 27th July, 2022. Miscellaneous Civil Appeal No. 52 of 2022 filed by the petitioners challenging the order passed by the Trial Court, below Exhibit-6 in Special Civil Suit No. 33 of 2022 is rejected by the learned District Judge, Jalgaon. Hence, the petitioners have filed Writ Petition No. 13117 of 2022.

4. Respondent No.1 in Writ Petition No. 13114 of 2022 has filed Regular Civil Suit No. 153 of 2021 against the petitioners and respondent No.2, for perpetual injunction against the defendants. Along with Regular Civil Suit No. 153 of 2021, plaintiff – respondent No.1 filed application Exhibit-6 for temporary injunction. The petitioners opposed the suit, by filing written statement. The Trial Court allowed the application Exhibit-6, by order dated 27th July, 2023. Miscellaneous Civil Appeal No. 51 of 2022 filed by the petitioners challenging the order passed by the Trial Court below Exhibit-6 in Regular Civil Suit No. 153 of 2021, is rejected by the learned District Judge, Jalgaon. These orders are challenged in Writ Petition No. 13114 of 2022.

5. It is the case of the petitioners that – petitioner Nos.1 and 6 are sons of Kailas @ Deepchand Ramchandra Pardeshi, petitioner No.7 is his daughter and petitioners No. 2 to 5 are legal heirs of deceased Suresh Deepchand Pardeshi (son of Deepchand Pardeshi). Ghanshyam Ramchandra Pardeshi is brother of Deepchand Pardeshi. 1486 square meter land, out of plot No. 286/1, approximately *ad measuring* 52316 square meter, situated between Bhadgaon Road and Ganesh Road at Chalisgaon, was possessed by Deepchand and Ghanshyam, since more than 60 years. Out of total land *ad measuring* 1486 square meter, 10000 square feet land is situated between Bhadgaon Road and Ganesh Road, at Chalisgaon (Hereinafter, for short “the suit land”). It was and is possessed by father of the petitioners, Deepchand and after him, by the plaintiffs and the remaining land was in possession of Ghanshyam and his sons. There is one house, consisting of 8 rooms, one workshop, one small hotel, one motor cycle garage, scrap store along with some trees and empty space. The petitioners are residing in the suit property as joint family.

6. The suit property was initially subject matter of civil suit, wherein a Court Receiver was appointed. Father of the petitioners came into possession of the suit property as a tenant,

in the name Goraknath Workshop. Rent of the suit property was being paid from time to time to the Court Receiver, till 1992. After the death of their father, the petitioners continued in possession of the suit property. They were paying Government Taxes and the City Survey record shows their names. Nobody came to collect rent after 1992, hence, they published a Public Notice, but none responded to the same.

7. In the year 2013, respondents No. 2 to 5 in Writ Petition No. 13117 of 2022 approached them and claimed that the suit property is sold to them by respondent No.1, in 2012. The petitioners, therefore, filed Regular Civil Suit No. 52 of 2013 against some of the respondents, for perpetual injunction, which was withdrawn with liberty to file fresh suit. The petitioners, therefore, contended that they are in possession of the suit property, since last more than 20 years and the cause of action for filing Special Civil Suit No.33 of 2022 arouse from April, 2021, when respondent No.5 tried to dispossess them, illegally, by using force.

8. Defendant No.2 in Special Civil Suit No. 33 of 2022, filed written statement and opposed the suit. He, admitted that he filed the suit against defendant No.1 for his share in the suit property. But, he denied the claims and averments made by the

petitioners in the suit and dispossession and four boundaries of the suit property. Respondent Nos.2 to 5 also opposed the suit, by filing written statement. They also denied four boundaries of the suit properties. They claimed that the cause of action is false and the Trial Court has no jurisdiction to entertain the suit. The respondents have claimed that they are in possession of their property and hence, the question of filing suit against them does not arise. They contended that suit for injunction cannot be filed against rightful owner.

9. The Trial Court has rejected the interim injunction application of the petitioners observing that -

“24. It is well settled law that the plaintiff also can claim title by adverse possession but he has to prove all essentials. Adverse possession is considered to be a legally recognized mode of acquisition of property. Mere possession of the land would not ripen into possessory title. Possessor must have intention to possess and hold the land adverse to the title of the true owner. It must be shown to exist at the commencement of the possession and he must continue in said capacity (emphasis supplied) for the period prescribed under the Limitation Act. Hence all the following elements / essential of adverse possession must be complied with for successful claim of adverse possession.

- a. There must be certain property which may be movable or immovable.*
- b. There must be actual possession of a person claiming right by himself or by persons deriving title from him. The possession*

must be adequate in continuity in publicity and in extent to show that it is adverse to the owner.

- c. The possession must be continuous.*
- d. The possession must be with intention of ouster of the real owner.*
- e. The intention of adverse possession must be within notice and knowledge of the real owner.*
- f. There must be dispossession of the true owner.*
- g. The permissive possession does not amount to dispossession.*
- h. Mere non user by the owner is not dispossession.*
- i. The period of limitation is 12 years against private land and 30 years against Government land and it starts from the date when the possession of the defendant becomes adverse to the plaintiff.*
- j. For adverse possession, it is necessary for the person to admit the title of the real owner and to establish his open and hostile possession without any interruption.*
- k. Merely claiming the land or paying taxes on it, without actual possessing, it is not sufficient for adverse possession.*
- l. An entry in the revenue record does not indicate that the person in whose favour the entry has been made is in adverse possession and such entry is not the proof of adverse possession.*
- m. Once the suit for possession is instituted against the defendant in possession his adverse possession is not continued thereafter.”*

10. The suit property was admittedly subject matter of the civil suit in which Court Receiver was appointed and father of the petitioners possessed the same as tenant, from the Court Receiver. Rent of the suit property was paid till 1992 and after death of their father, the petitioners continued in possession of the suit property. Thus, *prima facie*, there is relationship of landlord and tenant between the parties, which is evident from the rent and tax receipts filed on record. As petitioners filed earlier suit in the year 2013, the period of adverse possession comes to only 11 years, which is less than 12 years, therefore, the contention of the petitioners is *prima facie*, not acceptable.

11. The trial Court has rightly accepted the contention of the respondents that in view of the sale deeds dated 31st October, 2012 and 8th November, 2021, possession of the suit property is given to them. In view of the fact that the petitioners are continued in possession of the suit property as tenants, their claim of adverse possession is *prima facie* unacceptable.

12. After considering the material on record, the Trial Court has recorded a finding that the petitioners failed to prove elements "a" to "K" mentioned in the impugned order of the Trial Court, to prove claim of adverse possession. It is further held that no specific date and time is pleaded by the petitioners and

vague statements are made about the cause of action as to disturbance of possession. In view of the settled legal position that suit for injunction cannot be filed against real owner, the Trial Court has rightly come to the conclusion that irreparable loss would be caused to the respondents, if injunction is granted in favour of the petitioners, as the respondents have purchased the suit property by registered sale deeds.

13. In the sale deeds executed in favour of the respondents, in the description, it is specifically mentioned that the said transactions are in respect of the property, which has fallen to the share of the respondents and possession is handed over to them.

14. The receipts executed in favour of the Court Receiver, in the name of Gorakhnath Workshop, also establish the fact that the father of the petitioners was tenant of the suit property and, therefore, the petitioners cannot raise a plea of adverse possession, when they were in possession of the suit property as tenants.

15. It is a matter of record that in previous suit i.e. Regular Civil Suit No. 52 of 2013, the petitioners came with a case of tenancy. Thus, they have admitted that their possession was

permissive possession. Pleading of the earlier suit are rightly considered by the Appellate Court, observing that pleadings in the earlier suit are binding on the petitioners. It is further observed that the petitioners are not firm about the area in their possession. The Appellate Court also observed that the respondents have come out with a specific case that they have purchased the suit property and the petitioners are not disputing the sale deeds executed in their favour. The petitioners claim that predecessor in title of the respondents was not in possession of the suit property and, therefore, they are not in possession of the suit property and they have not filed suit for possession. The Appellate Court has rightly observed that long standing possession cannot be disturbed without due process of law, but for that purpose the petitioners have to establish their long standing possession. It is held that documentary evidence relied on by the petitioners is not sufficient to show that they are in possession of the suit property. The Appellate Court, therefore, has upheld the findings of the Trial Court that the respondents are in possession of the suit property, on the basis of the sale deeds.

16. Both the Courts have given concurrent findings of fact on the basis of material placed on record. Both the Courts have

given cogent reasons while refusing interim relief to the petitioners. This Court, while exercising writ jurisdiction will not sit as an appellate Court, on the findings of facts recorded by both the Courts. No illegality or perversity is found in the orders impugned in the present writ petitions. Writ petitions being devoid of merit, are dismissed.

[NITIN B. SURYAWANSHI]
JUDGE