

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER DATED 210 OF 2023
WITH
INTERIM APPLICATION NO.2576 OF 2023**

Shrikrishna Krida Bahuuddeshi
Sanshodhan Sanstha and Anr. ... Appellants
versus
Solapur Municipal Corporation and Ors. ... Respondents

Mr. Vivek V. Salunke, for Appellants.
Mr. Vishwanath Patil for Respondent No.1.
Mr. Kunal Damle, for Respondent Nos.2 to 7.

**CORAM: N.J.JAMADAR, J.
DATE : 24 MARCH 2023**

P.C.

1. Heard the learned Counsel for the parties.
2. This Appeal is directed against the order dated 7 February 2023 passed by the learned Third Joint Civil Judge, Senior Division, Solapur, on an application for temporary injunction in Special Civil Suit No.91 of 2022, whereby the Application came to be rejected.
3. Initially, the Appellants had assailed the said order before the District Judge, Solapur. By an order dated 23 February 2023, the Appeal came to be returned to the Appellants for presentation to the proper Court.
4. The Appellant No.1 / Plaintiff is a public charitable trust. Appellant No.2 has been authorized to represent the Appellant No.1 Trust. Respondent No.1/Defendant is the Municipal Corporation. Respondent No.2 / Defendant No.2 is

a private limited company. Respondent Nos.3 to 7 are the Chairman and directors of the Respondent No.2 Company.

5. The Plaintiffs claimed that an area admeasuring 1208.17 sq. meters out of a larger plot bearing No.164/4 situated at Laxmi Peth, Solapur (the suit property) has been in occupation and possession of the Plaintiffs. The Plaintiffs run a wrestlers training center at the suit property. Many renowned wrestlers have been trained at the said center. Since 1995, the Plaintiffs have been in openly using the suit property for diverse purposes, like residential rooms for the wrestlers, WC Units, tin shed and volleyball ground peaceably and without any interruption. The Plaintiffs have, thus, acquired ownership over the suit property by way of adverse possession. Yet the Plaintiffs requested Defendant No.1 – Solapur Municipal Corporation to allot the said property on a long lease of 29 years. By a Resolution dated 20 January 2021, the Municipal Corporation allotted the suit property to the Plaintiffs on lease for a term of 29 years.

6. The Plaintiffs alleged, on the pretext of requirement of the suit property for development under Smart City Project, Defendant Nos.2 to 7 attempted to dispossess the Plaintiffs by taking the law in their hands. Hence, the Plaintiffs were constrained to institute a suit for declaration that the Plaintiff No.1 has perfected title to the suit property by prescription and consequential reliefs of perpetual injunction.

7. An application for temporary injunction (Exhibit 5) came to be filed

seeking to restrain the Defendants from causing obstruction to the possession of the Plaintiffs till the disposal of the Suit.

8. Defendant Nos.1 to 3 resisted the Application. By the impugned order, the learned Civil Judge was persuaded to reject the Application holding, inter alia, that no prima facie case of adverse possession was made out. Even prima facie possession over the suit property could not be established. Resultantly, the parameters of balance of convenience and irreparable loss were required to be answered against the Plaintiffs.

9. The learned Counsel for the Appellants submitted that the Appellants/Plaintiffs have all along been in possession of the suit property. There is voluminous material to show that the Plaintiffs have been in peaceful occupation of the suit property to the knowledge of one and all. In the circumstances, when a strong prima facie case of *de facto* possession over the suit property was made out, the Plaintiffs' possession needs to be protected till the adjudication of the suit. Lest, the Plaintiffs would suffer an irreparable loss.

10. I am afraid to accede to the submission of Mr. Salunke. Evidently, the Plaintiffs approached the Court with a case that they have perfected title to the suit property on the basis of adverse possession. Mr. Salunke was at pains to point out to the Court from the pleadings as to how and when possession of the Plaintiffs became adverse to the owners of the suit property. There is not a whisper as to when possession became hostile so as to compute the period of limitation. In fact, the

averments in paragraph No.6 of the plaint work out retribution of the Plaintiff's claim of adverse possession. The Plaintiffs claimed to be in possession of the suit property openly and peacefully since the year 1995. Yet the Plaintiffs claimed to have sought a long term lease of the suit property. The said action dismantled the very substratum of the Plaintiffs' claim that it had been in hostile possession of the suit property as a owner thereof to the knowledge of the Defendant No.1. It is trite, permissive possession can never be hostile. The resolution passed by the Municipal Corporation granting lease of the suit property sought to be pressed into service on behalf of the Appellants/Plaintiffs thus does more harm than good to the Plaintiffs claim.

11. The learned Civil Judge, in the circumstances of the case, committed no error in declining to exercise discretion in favour of the Plaintiffs. No interference is, thus, warranted in exercise of Appellate jurisdiction.

12. Hence, the following order :

ORDER

- (i) The Appeal stands dismissed with costs.
- (ii) In view of the dismissal of the Appeal, the Interim Application does not survive and stands disposed.

(N.J.JAMADAR, J.)