

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.13694 OF 2022

Dilip Machhindra Ingole ... Petitioner
V/s.
Navnath Vasant Padwalkar & Ors. ... Respondents

**WITH
WRIT PETITION NO.3953 OF 2023**

Vijaya Mahadeo Harale & Ors. ... Petitioners
V/s.
Navnath Vasant Padwalkar & Ors. ... Respondents

Mr. Surel S. Shah i/by Mr. Rahul P. Kasbekar for the
petitioners in WP/3953/2023.

Mr. Surel S. Shah i/by Mr. Hrishikesh S. Shinde for the
petitioners in WP/13694/2022.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 26, 2023

P.C.:

1. The petitioners are original defendant Nos.1 to 4 in a suit for declaration and perpetual injunction. The suit properties are described in paragraph 1 of the plaint. According to the plaintiff, father of defendant Nos.1 to 4 sold suit properties to the predecessor-in-title of the plaintiff in 1993. In furtherance of the sale deed, predecessor of the plaintiff was put in possession of the suit property. Despite said fact, defendant Nos.1 to 4 on 20 November 2018 sold suit properties in favour of defendant No.5.

The plaintiff, therefore, filed suit for declaration that the sale deed executed in favour of defendant No.5 be declared as void and consequential injunction not to disturb the possession of the plaintiff over the suit property.

2. The Courts below granted injunction on the ground that the plaintiff has proved possession over the suit property.

3. Learned advocate for the petitioner submitted that the suit properties are ancestral properties of defendant Nos.1 to 4. On the date of sale deed in the year 1993, petitioners had share by birth and, therefore, their father had no exclusive right to sale suit properties to the predecessor-in-title of the plaintiff. Therefore, defendant Nos.1 to 4 continued to be co-sharer of the property in law. Hence, injunction which has the effect of ousting co-owner ought not to have been granted by the Courts below.

4. Prima facie it appears that in 1993 defendant Nos.1 to 4's father executed sale deed of the suit property in favour of the predecessor-in-title of the plaintiff. Possession of the property prima facie appears to be delivered in favour of predecessor-in-title of the plaintiff. From 1993 till filing of the suit, prima facie it appears that the plaintiff continued to be in possession. If that be so, judgment in the case of **Jagdish Dutt & Anr. v. Dharam Pal & Ors.** reported in (1998) 7 SCC 392 : AIR 1999 SC 1694 would be applicable. The Apex Court has held that generally it is true that injunction ousting co-owner from his possession cannot be granted. However, if by way of arrangement co-sharer is allowed to continue in possession for sufficiently long time, such

arrangement can be continued during pendency of the suit. Hence, in my opinion, the arrangement of the plaintiff being in possession of the suit property need to be continued during pendency of the suit. Ultimately, rights of the parties would be conclusively decided at the time of final hearing of the suit. Hence, in my opinion, there is no error of jurisdiction committed by the Courts below.

5. Both the writ petitions are accordingly dismissed. No costs.

6. It is made clear that the observations made in the present order are prima facie in nature and shall not influence the Trial Court while deciding the suit on merits.

(AMIT BORKAR, J.)