

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 721 OF 2022

Gajanan Mahadeo Potdar

Age – 66 years, Occupation – Agriculturist,
Ra. Dighanchi, Taluka Aatpadi,
District – Sangli.

.. Petitioner

Versus

1. **Govind Maruti Jare,**
Age – 52 Years, Occupation – Agriculturist
2. **Ranjana Gopinath Jare,**
Age – 45 Years, Occupation – Household
3. **Pradeep Gopinath Jare,**
Age – 29 Years, Occupation – Agriculturist
4. **Sharad Gopinath Jare,**
Age – 24 Years, Occupation – Agriculturist

Nos. 2 to 4 R/at. Post – Khawaspur,
Taluka – Sangola, District – Solapur.

5. **Vilas Mahadeo Potdar**
Age – 72 Years,
Occupation – Photography,
Ra. Meera-2, Chirag Nagar,
Aagra Road, Ghatkopar, Mumbai.
6. **Balkrishna Mahadeo Potdar**
Age 71 Years, Occ. - Photography,
Ra. Behind Panchasheel, Premnagar,
Kharegaon, Kalawa, Thane 400 605.
7. **Sunil Suhas Potdar**
Age 45 Years, Occupation – Service
8. **Sudhir Suhas Potdar**
Age 45 Years, Occupation – Service
Both R/at. C2/13, Navsaurakshan Co-op
Housing Soc., Swatantra Marg, Near
Liberty Garden,

Malad (W), Mumbai.

.. Respondents

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- Mr. Prathamesh B. Bhargude for Petitioner
 - Mr. Dilip Bodake for Respondent No. 4
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CORAM : MILIND N. JADHAV, J.
Reserved on : JANUARY 20, 2023
Pronounced on : JUNE 05, 2023

JUDGMENT :

1. This Writ Petition challenges the legality and validity of the order dated 22.10.2021 passed below Exh. 243 in Regular Civil Suit No. 14 of 2005 passed by the Civil Judge, Junior Division, Aatpadi, District Sangli. Respondent Nos. 1 to 4 are the four Applicants who have filed Application below Exh. 243 before the Trial Court and sought impleadment as Defendants to the suit proceedings under Order I, Rule 10 of the Code of Civil Procedure, 1908 (for short, “CPC”). They are not parties to the civil Suit. Application is filed on 09.01.2018. By the impugned order, Trial Court allowed the application and directed that the Applicants be added as Defendants in the Suit. Plaintiff being aggrieved has filed the present Writ Petition to challenge the order dated 22.10.2021.

2. To appreciate the controversy, it is pertinent to refer the facts which are outlined herein under:-

2.1. Regular Civil Suit No. 14 of 2005 was filed by one Mahadeo Potdar against his four sons seeking a declaration and injunction in respect of the suit properties. The suit properties are described in paragraph No. 1 of the present Petition. There are several suit properties. Mahadeo Potdar was constrained to file a Suit in view of the fact that the suit properties were purchased in the names of his four sons by him and Defendant No. 1 was seeking to deal with some of the suit properties in question which were purchased in his name with third parties (Applicants who filed the Application seeking impelading below Exh. 243). Application for temporary injunction below Exh. 5 was also filed. The said Application for temporary injunction was rejected by the trial Court on 16.04.2005. However, Misc. Civil Appeal No. 41 of 2005 against the order of rejection of Exh. 5 came to be allowed and the order passed on Exh. 6 (wrongly referred to 'as such' instead of Exh. 5) was set aside. However, the consequence of setting aside the order dated 16.04.2005 remained to be mentioned in the operative part of the order of the Appellate Court that temporary injunction was allowed / granted against the Defendants and in favour of Mahadeo Potdar. In view of this ambiguity, both Plaintiff and Defendant No. 1 filed separate Writ Petitions in this Court being Writ Petition No. 1734 of 2007 filed by the Plaintiff - Mahadeo Potdar and Writ Petition No. 676 of 2007 filed by Defendant No. 1 Suhas Potdar. Both Writ Petitions sought

clarification of the order passed by the Appellate Court. By common order dated 09.06.2011, both Writ Petitions were disposed of by permitting the Plaintiff Mahadeo to file a clarification application before the Appellate Court and a further direction to the Appellate Court to consider the said Application. Plaintiff filed the application seeking clarification and modification of the order dated 21.08.2006 and the Appellate Court allowed the same and modified the said order by supplying the omission namely that Exh. 5 i.e. the Application for injunction would stand allowed. Thus, the Application for injunction filed by the Plaintiff - Mahadeo in 2005 stood allowed by the order dated 09.06.2011.

2.2. In the interregnum Mahdao Potdar expired on 18.10.2007. Defendant No. 4 i.e. Gajanan Mahadeo Potdar filed an application for transposing himself as Plaintiff in the Suit filed by his father Mahadeo Potdar below Exh. 82. The said application filed for transposition was allowed by the trial Court and Gajanan Potdar was accordingly transposed as Plaintiff. The challenge to the said transposition failed as the Writ Petition filed by Defendant No. 1 i.e. Writ Petition No. 8269 of 2010 came to be dismissed by a learned Single Judge of this Court on 14.03.2011.

2.3. In the meanwhile, it is seen that Defendant No. 1 (Suhas Potdar) had in the interregnum executed two sale deeds on

07.09.2009 in respect of the properties which stood in his name with Respondent Nos. 1 to 4 herein (Applicants who filed the impleadment application).

2.4. When the above fact was came to the knowledge of Gajanan Potdar who was transposed in the shoes of the Plaintiff in place of Mahadeo, he filed a separate Regular Civil Suit No. 97 of 2009 for declaration and injunction in respect of the suit properties. This separate civil Suit was filed against Defendant No. 1 and Defendant Nos. 2 and 3 therein who were the purchasers of the suit property from Defendant No. 1 seeking injunction from interfering with the Plaintiff's possession in respect of the suit property. In that suit, application for injunction was rejected by the trial Court on 23.12.2010 on the ground that entries made in the 7/12 extract disclosed the name of the Plaintiff as appearing in respect of 3/4th share in the suit properties whereas name of Defendant No. 1 was appearing in respect of 1/4th share of the suit properties. However while disposing of the Application for injunction, the trial Court in paragraph No. 16 of the order dated 23.12.2010 made the following observations which are as follows:-

“16. In view of observations in the citation relied upon by the Ld. Counsel for plaintiff which is cited supra they cannot claim their possession in suit properties until co-sharers partition the suit properties by metes and bounds.....”

2.5. From the above order, it is clear that Defendant Nos. 2 and 3 therein (Respondent Nos. 1 and 2 herein) who had purchased the share of the Defendant No. 1 could not claim possession of the suit properties until the property was divided by metes and bounds. Appeal against the above order was dismissed by the Appellate Court on 09.06.2011. Writ Petition No. 5789 of 2011 was filed in this Court against the above order.

2.6. Coming back to the Regular Civil Suit No. 14 of 2005 filed by Mahadeo wherein the Plaintiff - Gajanan Potdar has been transposed, it is seen that in spite of the order passed by the trial Court rejecting the application having been clearly set aside by the Appellate Court on 21.08.2006, Defendant No. 1 executed two sale deeds dated 07.09.2009 in respect of the properties purchased in his name to clearly frustrate the suit filed by the Plaintiff. This Court by a detailed order dated 22.09.2015 passed in Civil Application No. 109 of 2015 in Writ Petition No. 5789 of 2011, restrained Defendant Nos. 2 and 3 therein (Applicant Nos. 1 and 2 herein) who were the third party purchasers from Defendant No 1 from disturbing possession of the Plaintiff in R.C.S. No. 14 of 2005. This Court issued a further direction for expeditious hearing of both suits before the trial Court and also clarified that pendency of Writ Petition No. 5789 of 2011 would not be an impediment for the trial Court to proceed with the

suit.

2.7. In the above background in 2018, Applicants namely Respondent Nos. 1 to 4 herein filed Application below Exh. 243 seeking impleadment in R.C.S. No. 14 of 2005. It was pleaded by the Applicants before the trial Court that Defendant No. 1 executed two sale deeds on 07.09.2009 with Applicant No. 1 and the husband of Applicant No. 2. It was further stated that Applicant No. 2 happened to be the father of Applicant Nos. 3 and 4. It was further pleaded that Applicants were in possession of the suit property purchased by them and they had right to use the water in it. It was further pleaded that the revenue record was mutated in view of the transactions with Defendant No. 1 and therefore in the dispute between the Potdar family members pertaining to entitlement of the suit properties, the Applicants were a proper and necessary party.

2.8. The Plaintiff who is the Petitioner herein vehemently resisted the impleadment Application on the ground that the entire suit properties were bequeathed by Mahadeo Potdar in favour of the Plaintiff alone by Will and he was the sole owner of the entire properties. According to Plaintiff, the entry in the revenue record was illegal and Defendant No.1 had no right to alienate and transfer the suit properties to the Applicants.

3. Mr. Bhargude, learned Advocate for the Petitioner – Plaintiff would submit that the dispute in R.C.S. No. 14 of 2005 is entirely between the family members of Potdar family and pertains to the properties which were purchased by his father Mahadeo Potdar and by a Will bequeathed to the Plaintiff alone. He would submit that in so far as the Applicants' contention of purchase of a portion of the suit properties is concerned, Plaintiff has filed a separate substantive suit against the Applicants challenging the sale deeds executed by Defendant No. 1 in their favour. He would submit that this Court has returned a finding that the Applicants are not related with the suit property and they will have to file a distinct suit for seeking partition and separate possession of their portion and that they shall not disturb the possession of the Plaintiff. Mr. Bhargude would submit that the impugned order allowing impleadment of the Applicants to the R.C.S. No. 14 of 2005 is therefore bad in law as the trial Court has not taken into consideration that the sale deeds executed between Defendant No. 1 and the Applicants are infact in contravention and violation of the injunction order dated 21.08.2006 which was clarified subsequently on 09.06.2011. He would submit that perusal of the order dated 21.08.2006 would clearly imply that once the Appeal was allowed by the Appellate Court and the order passed below Exh. 5 (the temporary junction application) came to be set aside, it is by implication that the injunction application stood allowed. He would

submit that the Defendant No.1 himself filed Writ Petition No. 676 of 2007 in this Court seeking a clarification of the order dated 21.08.2006. At that time in the year 2007, Defendant No.1 had not created any third party rights in the suit properties. He would submit that it is very clear that only to frustrate the civil suit filed by Mahadeo which was pending in this Court and pursuant to Mahadeo's demise on 18.10.2007, Defendant No. 1 has surreptitiously transferred his share in the suit properties to the Applicants despite having clear knowledge of the order dated 21.08.2006 passed by the Appellate Court allowing the Appeal filed by the Plaintiff. He would submit that this was important circumstance for consideration which has been completely ignored by the trial Court in the impugned order. He would submit that in that view of the matter, the sale deeds executed by Defendant No. 1 in favour of the Applicants are *non est* and *void ab initio* as they have been executed in contravention of the temporary injunction granted by the Appellate Court while allowing the Appeal against the order of rejection of temporary injunction by the trial Court. He would therefore submit that Applicants are not a proper and necessary party to the Suit and the impugned order deserves to be set aside.

3.1. In support of his submissions, he has referred to and relied upon the following decisions:-

- (i) *Rajendra Saxena & Ors. Vs. Sharad Ratnam & Ors.*¹;
- (ii) *Tushar Kishor Trivedi Vs. Union of India & Ors.*²;
- (iii) *Sandeep Ramesh Solanki & Ors. Vs. Sou. Shevanti Dadoba Nashte*³;
- (iv) *LIC Vs. Sanjeev Builders Pvt Ltd*⁴;
- (v) *Mohinder Singh & Ors. Vs. Shri. Madan Jha*⁵;
- (vi) *Jehal Tanti & Ors Vs. Nageshwar Singh*⁶;
- (vii) *Vidur Impex & Traders Vs. Tosh Apartment*⁷;
- (viii) *Sudhamayee Pattnaik Vs. Bibhu Prasad*⁸.

4. PER CONTRA, Mr. Bodake learned Advocate appearing for Respondent No. 4 would submit that while allowing the Civil Appeal on 21.08.2006, the Appellate Court did not issue the specific injunction order as sought for by the Plaintiff in the temporary injunction application below Exh. 5 and considering the nature of the said order, there was no embargo on Defendant No. 1 to execute the sale deeds with the Applicants. He would submit that in view of the peculiar facts and circumstances in the present case when the Applicants purchased the suit properties vide two registered sale deeds dated 07.09.2019, there was no injunction order operating in respect of the suit properties and the clarification came much later i.e. on 09.06.2011 and therefore the Applicants are not in breach of any

1 2020 SCC OnLine Bom 180

2 Judgment dated 10.10.2017 in Cri. W.P. No. 2915 of 2017

3 2019 SCC OnLine Bom 1312

4 (2018) 11 SCC 722

5 Decision dated 08.01.2004 in CM.9592/2003 in CW No. 2742/2003 (Delhi High Court)

6 (2013) 14 SCC 689

7 2012(8) SCC 384

8 2022 Live Law SC 773

injunction order of the Court. He would further submit that Applicants were not aware of the pendency of the R.C.S. No. 14 of 2005 and the orders passed therein and are bonafide purchasers for value without notice. He would submit that Plaintiff did not register the *lis-pendense* of the Regular Civil Suit No. 14 of 2005 as required by law and hence, the transaction of Defendant No. 1 with the Applicants is entirely legal and the right, title and interest in the suit properties has devolved upon the Applicants. In support of his submissions, he has referred to paragraph No. 52 of the decision of the Supreme Court in the case of **Thomson Press India Ltd Vs. Nanak Builders**⁹ and contended that the party committing the breach may doubtless incur the liability to be punished for the breach committed by it but the sale by itself may remain valid between the parties to the transaction and the transfer would be effective. He has next relied upon the decision of the Supreme Court in the case of **Amit Kumar Shaw & Anr. Vs. Farida Khatoon & Anr.**¹⁰ in support of impleadment of the Applicants to the Suit under Order I, Rule 10 read with Order XXII, Rule 10 of the CPC and Section 52 of the Transfer of Property Act, 1882. He would submit that presence of the Applicants in R.C.S. No. 14 of 2005 contended between the family members of the Potdar family is necessary for complete determination of the *lis* between the parties since the Applicants have acquired substantive rights of

⁹ AIR 2013 SC 2389

¹⁰ 2005(3) Mh.L.J. 330

Defendant No. 1. He would submit that in this view of the matter, the Applicants i.e. Respondent Nos. 1 to 4 herein are proper and necessary parties and the order dated 22.10.2021 passed below Exh. 243 deserves to be sustained.

5. I have heard Mr. Bhargude, learned Advocate for Petitioner and Mr. Bodake, learned Advocate for Respondent No. 4 and with their able assistance perused the pleadings in the present Writ Petition. Submissions made by the Advocates have received due consideration of the Court.

6. At the outset, it is seen that there is no dispute about the fact that the trial Court in R.C.S. No. 14 of 2005 passed the order dated 16.04.2005 rejecting the Application for temporary injunction. It is again undisputed that Misc. Civil Appeal No. 41 of 2005 was filed by the Plaintiff being aggrieved by the rejection of the application for temporary injunction. The said Misc. Civil Appeal came to be allowed on 21.08.2006 by the Appellate Court. The said order dated 21.08.2006 is appended as Exh. "C" (Page Nos. 38 to 45 of the Writ Petition). I have perused the said judgment / order. When the said order was passed, Mahadeo the original Plaintiff was alive. The present Plaintiff Gajanan was Defendant No. 4 at the then time. While allowing the Appeal, the Appellate Court framed the following four points for consideration:-

No.	Points	Findings
1.	Does plaintiff prove a <i>prima facie case against defendant No. 1</i> ?	Yes
2.	Whether plaintiff is entitled to get temporary injunction as prayed?	Yes
3.	Whether it is essential to interfere with the order passed by lower Court?	Yes
4.	What order?	As per final order.

7. It is pertinent to note that the findings on the first three points for determination are in the affirmative. The reasons given by the Appellate Court begin from paragraph No. 7 to paragraph No. 11 of the said order. It has been concluded by the Appellate Court that on the basis of the reasons, the findings returned by the trial Court are totally incorrect and therefore the order passed by the trial Court deserves to be set aside. In that view of the matter, the Appeal was allowed and the order passed by the trial Court below Exh. 6 (wrongly mentioned 'as such') in R.C.S. No. 14 of 2005 dated 16.04.2005 was set aside. It is true that the consequence and sequitur of this order was not stated in clear and unequivocal words that the application for temporary injunction stands allowed. However, it is pertinent to note that Defendant No. 1 also understood the context in which the said order was passed by the Appellate Court and therefore he himself filed a Writ Petition seeking clarification of the said order. In this view of

the matter, the act of Defendant No. 1 to convey his share in the suit properties to the Applicants is *prima facie* violative of the order passed by the Appellate Court. Applicants and Defendant No. 1 have both argued that the clarification came only on 09.06.2011 which is much after the execution of the two sale deeds. This submission of the Defendant No. 1 and the Applicants deserves to be rejected outrightly.

8. Considering the aforementioned events, it cannot lie in the mouth of the Defendant No.1 to make such submissions nor Applicants can derive any mileage from the said submissions and seek impleadment in the Suit between the Potdar family members in the pending civil Suit. The civil Suit is pending before the trial Court. Considering the present status, I am of the *prima facie* opinion that the execution of the sale deeds were clearly in violation and breach of the order of injunction passed as far back as in 2006 by the Appellate Court. Though Applicants and Defendant No. 1 have attempted to argue that there was no specific order about temporary injunction, the detailed substantive order dated 21.08.2006 alluded to herein above is very clear and has also been accordingly understood by Defendant No. 1. In this respect my attention is drawn to paragraph No. 13 of the decision in the case of *Jehal Tanti (supra)* as also paragraph No. 37 of the decision in the case of *Rajendra Saxena (supra)* both relied upon by the Petitioner.

9. That apart it would be worthwhile to quote the observations of this Court in the order dated 22.09.2015 in Civil Application No. 109 of 2015 in Writ Petition No. 578 of 2011. Paragraph Nos. 7 and 8 are directly relevant and are reproduced herein under:-

“7 The above Petition as indicated above had come up for admission on 23-8-2011 when a Learned Single Judge of this Court (R. M. Borde, J.) has admitted the above Petition and granted interim relief in terms of prayer clause (c). The said aspect has already been referred to in the earlier part of this order. In the context of the clarification sought in the above Civil Application, it is required to be noted that in the first round i.e. the Suit filed by the father of the Plaintiff against the Defendant No.1 Suhas Potdar, the Lower Appellate Court allowed the application for temporary injunction filed by the Plaintiff by issuing the clarification dated 21-8-2006. There can be no dispute about the fact that the order passed rejecting the application for temporary injunction was set aside which was to the knowledge of both the parties. Hence inspite of the order passed by the Trial Court rejecting the application being set aside by the Lower Appellate Court by order dated 21-8-2006, the Defendant No.1 had chosen to execute two Sale Deeds in favour of the third parties on 7-9-2009. This can obviously attributed to the fact that the endeavour appears to be to frustrate the Suit filed by the Plaintiff.

8 Now coming to the Suit filed by the Plaintiff Gajanan Potdar, it is required to be noted that though the application for temporary injunction was rejected by the Trial Court, the Trial Court has made observations in paragraph 16 which have been referred to hereinabove. The said observations therefore impinge upon the claim of the Defendant Nos.2 and 3 being put in possession of the specific portion of the suit property by the Defendant No.1. The Learned Single Judge of this Court who pass the order on 23-8-2011 has adverted to the aforesaid aspects and has also observed that the Defendant Nos.2 and 3 who are the strangers obviously cannot be allowed to inter meddle with the Suit property and remedy is for them to file a separate Suit for partition seeking possession. The upshot of the aforesaid discussion would be that the the Defendant Nos.2 and 3 are restrained from disturbing the possession of the Plaintiff in respect of the suit property. Hence by issuing the clarification as aforesaid, the Civil Application is disposed of.”

10. In view of the categorical observations made by this Court as alluded to herein above, I am of the *prima facie* opinion that there is

every reason for Defendant No. 1 to have entered into the two sale deeds in September 2009 to frustrate the Suit filed by the Plaintiff despite the pendency of his own Writ Petition seeking clarification of the order passed by the Appellate Court.

11. From the above, it is clearly derivated that Defendant No. 1 entered into the two sale deeds in the teeth of the order of injunction passed by the Appellate Court of which Defendant No. 1 was completely aware of and mindful of the said fact. Therefore on consideration of the above facts, observations and findings, it would be wholly unreasonable to hold that the Applicants were unaware of the pending suit as any diligent purchaser of the substantive immovable properties would have inquired about the same especially when the said properties were part of undivided joint family properties. The conduct of Defendant No. 1 as also the Applicants is certainly not above board. The reasons given by the learned Trial Court in paragraph No. 8 of the impugned order are wholly unreasonable, vague, insufficient and cannot be countenanced for impleadment of the Applicants as a proper and necessary party i.e. Defendants in R.C.S. No. 14 of 2005.

12. In view of the above observations and findings, the impugned order dated 22.10.2021 is quashed and set aside resulting in the Petition being allowed and disposed of in terms of prayer clause

(A) which reads thus:-

“[A] That this Honourable Court be pleased to issue a writ certiorari or writ in the nature of certiorari or any other appropriate writ direction and order under Article 227 of the Constitution of India, 1950, quashing and setting aside the order passed below Exhibit-243 in RCS No. 14 of 2005 dated 22nd October, 2021, passed by Civil Judge, Junior Division, Aatpadi, District – Sangli.”

[MILIND N. JADHAV, J.]

13. After the present Judgment / Order is pronounced, Mr. Bodake, learned Advocate for Respondent No. 4 has sought stay of the present Judgment / Order to approach the Supreme Court.

14. Considering the facts in the present case and especially, when the Writ Petition of Respondent No. 4 was pending in this Court for seeking a clarification of the injunction order passed by the Appellate Court and despite that the Petitioner having ventured into entering and executing the two sale deeds in 2009 to frustrate the Plaintiff's claim, I am not inclined to accede to the request made by Mr. Bodake. Hence, request for stay stands rejected.

[MILIND N. JADHAV, J.]