

AGK

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

WRIT PETITION NO.1724 OF 2023

Shivaji Sadashiv Patil

... Petitioner

V/s.

Vishnu Bhikaji Chougale & Ors.

... Respondents

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Mr. Anand S. Patil for the petitioner.

Mr. Chetan G. Patil i/by Mr. Mandar G. Bagkar for
respondent Nos.1, 2 3(A) and 3(B).

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 26, 2023

P.C.:

1. By this writ petition under Article 227 of the Constitution of India, the petitioner/original defendant No.4 is challenging order passed by the Appellate Court setting Aside Trial Court's order and restrained defendant Nos.2 to 4 from alienating the suit property and interfering plaintiffs' possession over the suit property.

2. According to the plaintiffs, based on agreement to sale in the year 1967 the predecessor was in possession of the suit property. In support of the case of possession, the plaintiffs produced 7/12 extracts from 1976 till 2015-2016; tax receipts prior to filing of the suit; and sugarcane receipts.

3. Defendant Nos.2 and 3 who are vendors of defendant No.4 filed written statement. According to defendant Nos.2 and 3, their

predecessor and one Y.D. Patil (Wadingekar) and Mahadev Patil (Wadingekar) were cultivating the suit land. Predecessor of defendants was in permissive possession.

4. Defendant No.4 filed separate written statement and contested the suit by contending that defendant No.4 is put in possession by defendant Nos.2 and 3 for valuable consideration. In support of their case, the defendants filed 7/12 extract, copy of complaint and statement of witnesses recorded by the police on 18 May 2020.

5. The Trial Court, based on material on record, recorded a finding that though the ancestor of the plaintiffs were found in possession of the suit property, their possession was not exclusive possession. The Trial Court also recorded a finding that along with entry of ancestor of plaintiffs, there are entries of other two persons in the possession column and, therefore, rejected the application of the plaintiffs.

6. The Appellate Court, by the impugned order, allowed the appeal. The Appellate Court placed reliance on 7/12 extracts, statement of defendant Nos.2 and 3 before police and permissive possession of the plaintiffs over the suit property.

7. On perusal of the record prima facie it appears that the 7/12 extracts record from 1976 till 2015 indicates plaintiff in possession. However, from 1983 there are entries of other two persons to the extent of half share in possession column of the property. However, crucial document which is produced by the defendants is the statement of defendant No.4/vendor. The

statement of vendor was recorded prior to execution of the sale deed. The sale deed in favour of defendant No.4 was executed in the year 2021. The statement of defendant Nos.2 and 3 (vendors) was recorded on 18 May 2020. Both defendant Nos.2 and 3 have stated before the police that they are not in possession of the suit property and they may take recourse to due process by approaching competent Court. Therefore, in my opinion, cumulative effect of the statement along with written statement filed by defendant Nos.2 and 3 contending that the plaintiffs' predecessor was in permissive possession along with tax receipt and revenue entries prima facie support the case of the plaintiffs.

8. In my opinion, therefore, no error can be found with the exercise of discretion by the Appellate Court.

9. The writ petition stands dismissed. No costs.

10. The Trial Court is directed to decide the suit within nine months from today.

(AMIT BORKAR, J.)