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

**WRIT PETITION NO.8147 OF 2023**

Vilas Ramchandra Kate

... Petitioner

**V/s.**

Savitribai Kaluram Shedge & Ors

... Respondents

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Mr. Ruturaj Bathe, for Peititoner (Through V. C.).

Mr. Shashank Mangle a/w Mr. Abdul Shaikh &  
Ms.Reena Prajapati, for Respondents.

**CORAM : AMIT BORKAR, J.**

**DATED : NOVEMBER 30, 2023**

**P.C.:**

1. The petitioner (original defendant) has filed present writ petition challenge the order dated 2 March 2022 passed by the District Court, Pune granting temporary injunction application of respondents restraining the petitioner from disturbing respondents possession over the suit property.

2. Survey No.530, Hissa No.3, Village Mouje Bhugaon, Taluka Mulshi, District Pune is the suit premises. Respondent Nos.1 and 2 filed Regular Civil Suit No.312 of 2022 seeking declaration that the sale deed executed in favour of petitioners be declared as null and void and not binding on the plaintiffs and injunction restraining the petitioners from disturbing possession of respondent Nos.1 and 2 over the suit property and from creating

third party rights or from changing nature of the suit property.

3. According to respondent Nos.1 and 2, the suit property is their ancestral property. In the revenue record the name of father-in-law of plaintiff No.1 and grandfather of plaintiff No.2 were entered. The defendant Nos.2 to 4 are the children of Kaluram from the first wife. Plaintiff No.1 is the wife of Kalluram and plaintiff No.2 is the daughter of Kaluram. Therefore, according to the plaintiffs they are co-sharer in the suit property. It is contended that Kaluram executed sale deed in favour of present petitioners on 29 April 1991. The plaintiffs were not parties to the said sale deed and, therefore, filed suit seeking relief of declaration and injunction.

4. The plaintiffs contested the suit by stating that the sale deed is validly executed by Kalluram, exclusive owner of the suit property. The sale deed contains an averments on actual possession of the suit property is delivered to the petitioner. The plaintiffs are, therefore, in continuous possession of the suit property.

5. The Trial Court rejected the application. However, the Appellate Court allowed the appeal.

6. Hence, the defendant (purchaser) has filed the present writ petition.

7. According to the petitioner, the registered instrument contains a recital of delivery of possession. Therefore, in absence of conclusive evidence the Appellate Court could not have recorded a finding of possession in favour of plaintiff. According

to him, merely because the petitioner filed a complaint with the concerned police station, it cannot be construed that the plaintiffs are in possession of the suit property. According to the petitioner, the sale deed was executed for legal necessity and, therefore, the plaintiffs are in lawful possession of the suit property.

8. The Trial Court rejected the application holding that the 7/12 extract indicates name of defendant No.1 in possession of the suit property, the affidavits of adjacent property owner supports defendant's case and plaintiffs failed to show material to prove actual possession.

9. However, the Appellate Court relying on the complaint filed by defendant dated 21 September 2021 allowed the appeal.

10. I have perused the complaint produced by the defendant. The complaint is dated 21 September 2021. The suit is filed in January 2022. The complaint specifically indicates that the defendant visited the suit property on 18 September 2021. The defendant noticed that crop grown by the plaintiffs and, therefore, it is stated in the complaint that the plaintiffs have encroached over the suit property.

11. It is well settled that the person in settled possession is entitled to protect his possession even against true owner.

12. The Apex Court in the case of **Rame Gowda (Dead) by LRs v. M. Varadappa Naidu (Dead) by LRs & Anr.** reported in (2004) 1 SCC 769. The Apex Court in paragraph 9 of the judgment has laid down parameters of settled possession. Paragraph 9 reads thus:

“9. It is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by a catena of decisions. Illustratively, we may refer to *Munshi Ram v. Delhi Admn.* (AIR 1968 702 : (1986) 2 SCR 455 : 1968 Cri LJ 806), *Puran Singh v. State of Punjab* ((1975) 4 SCC 518 : 1975 SCC (Cri.) 608), *Ram Rattan v. State of U.P.* ((1977) 1 SCC 188 : 1977 SCC (Cri.) 85). The authorities need not be multiplied. In *Munshi Ram case*, it was held that no one, including the true owner, has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in the due course of law, he is entitled to defend his possession even against the rightful owner. But merely stray or even intermittent acts of trespass do not give such a right against the true owner. The possession which a trespasser is entitled to defend against the rightful owner must be settled possession, extending over a sufficiently long period of time and acquiesced to by the true owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and reinstate himself provided he does not use more force than is necessary. Such entry will be viewed only as resistance to an intrusion upon his possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force. In *Puran Singh case* the Court clarified that it is difficult to lay down any hard-and-fast rule as to when the possession of a trespasser can mature into settled possession. The “Settled possession” must be (i) effective, (ii) undisturbed, and

(iii) to the knowledge of the power or without any attempt at concealment by the trespasser. The phrase “settled possession” does not carry any special charm or magic in it; nor is it a ritualistic formula which can be confined to a straitjacket. An occupation of the property by a person as an agent or a servant acting at the instance of the owner will amount amount to actual physical possession. The Court laid down the following tests which may be adopted as a working rule for determining the attributes of “settled possession” (SCC p. 527, para 12): (i) that the trespasser must be in actual physical possession of the property over a sufficiently long period; (ii) that the possession must be to the knowledge (either express or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of *animus possidendi*. The nature of possession of the trespasser would, however, be a matter to be decided on the facts and circumstances of each case;(iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner; and (iv) that one of the usual tests to determine the quality of settled possession, in the case of culturable land, would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner, has no right to destroy the crop grown by the trespasser and take forcible possession.”

13. The fourth parameter of the said decision is on the point of crop grown by the person in possession. It is held that if, the person in possession had grown any crop over the suit property, possession of such person needs to be construed as settled possession. Therefore, once the defendant No.1 accepts that the

plaintiffs had grown crop over the suit property, the finding recorded by the Appellate Court that the plaintiffs are in possession of the suit property is in consonance with parameter (iv) of **Rame Gowda** (Supra).

**14.** The Trial Court while rejecting temporary injunction application failed to consider this material document and, therefore, the Appellate Court was justified in allowing the appeal in its limited powers. Therefore, in my opinion, no interference in the impugned order is called for.

**15.** It is made clear that the Trial Court shall decide the suit on its own merits uninfluenced by the observations made in the present order or the order passed by the Appellate Court.

**16.** The writ petition is, therefore, dismissed. No costs.

**(AMIT BORKAR, J.)**