

Harish

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

WRIT PETITION NO. 6063 OF 2023

Shri. Sanjeev Harikrishna Tiwari & Ors. ...Petitioners

Versus

Shri. Bhavesh Dhirajlal Parikh & Ors. ...Respondents

Ms. Poonam Madhwani, for the Petitioners.

Mr. G. S. Godbole, Senior Advocate a/w Mr. Saket Mone & Mr. Devansh Shah, i/b Vidhii Partners, for Respondent Nos. 1, 2, 4 to 7 and 9.

Adv. Aksha Hudda i/b Hudda & Associates, for Respondent Nos. 10 to 14.

CORAM : MADHAV J. JAMDAR, J.

DATE : 16th JUNE, 2023

P.C.:

1. Heard Ms. Madhwani, learned counsel appearing for the Petitioners and Mr. Godbole, learned senior counsel appearing for Respondent Nos. 1, 2, 4 to 7 and 9.

2. By the present Writ Petition, the Petitioners are challenging the legality and validity of the order dated 5th December, 2022 passed by the learned Appellate Bench of Court of Small Causes at Mumbai below Exhibit-9 in M. Appeal No. 155 of 2022 in Order below Exhibit-11 in T. D Suit No. 123 of 2022. By the said order dated 5th December, 2022 the said Application bearing Exhibit-9 filed by the present Respondent Nos. 1 to 3 was allowed and operation of the order dated 14th October, 2022 passed by the

learned Judge, Court of Small Causes at Mumbai below Exhibit-11 in T.D. Suit No. 123 of 2022 was stayed. By the said order dated 14th October, 2022 the learned Trial Court has allowed Exhibit-11 Application filed in T. D. Suit No. 123 of 2022 and restrained the Respondents, their agents, servants and contractors from interfering with the peaceful possession and enjoyment of the Petitioners of the suit land with respect to Survey No. 164, H No. 1/ A (part), CTS. No. 1100, situated at Village Kandivali, Taluka Borivali, Mumbai-400067 except the portion marked in red color on the map and portion of 12,000 sq. mtrs. in possession of Defendant Nos. 10 to 14 till the final disposal of the suit. By the impugned order dated 5th December, 2022, the said order of the learned Trial Court is stayed.

3. It is the contention of Ms. Madhwani, learned counsel appearing for the Petitioners that, the Petitioners are in possession of the property since 1st April, 1973. She submitted that, the Respondent trust appointed Hari Kisan Tiwari as a Farm Manager and the said agreement was extended from time to time. She pointed out various documents including Consent terms which are entered into in 2004, letter dated 11th December, 2001 and 4th April, 2015 as well as Collector's letter dated 3rd March, 2022 and also the photographs. On the basis of the said documents, it is her contention that, the Petitioners are in

possession of the property. On the other hand, Mr. Godbole, learned senior counsel appearing for the Respondents pointed out various orders passed by the learned City Civil Court as well as by this Court and by the Hon'ble Supreme Court and submitted that, the Petitioners are not in possession of the suit property.

4. Before considering rival submissions, it is necessary to set out certain factual aspects. In 1990, father of Petitioner No.1, 5 and 6 filed S. C. Suit No. 5551 of 1990 in the Bombay City Civil Court against the trust for injunction restraining the Respondents from disturbing their peaceful possession of the suit land. It is an admitted position that, the learned Judge of the City Civil Court has not granted any interim relief in the Notice of Motion No. 4190 of 1990. The learned counsel appearing for the Petitioners fairly submitted that, the Appeal From Order challenging the same was also dismissed. The said suit was decreed in favour of the Petitioners on 30th November, 2005 by granting injunction. The Trust filed First Appeal No. 247 of 2006 as well as Civil Application No. 631 of 2006. The said First Appeal was admitted on 4th May 2006. As far as the Civil Application No. 631 of 2006 for stay is concerned, the same was also granted by this Court on 4th May, 2006. Paragraph No. 2 of the said order reads as under :-

"2. The matter does not rest here. It is to be mentioned

here that immediately after filing of the suit, notice of motion was taken out by the respondent bearing No. 4190 of 1990. However, ad-interim injunction was refused initially and after hearing both sides the notice of motion was disposed of by the City Civil Court. Thus, it shows that during the pendency of the suit there was no injunction order in favour of the present respondent-plaintiff. Therefore, it is only when the decree has been passed, which is the subject matter of the present appeal, the order of perpetual injunction has come into force for the first time. However, in view of the above referred circumstances and looking to the fact that, the property belongs to the public trust and person who claims to be a manager of the property is trying to snatch and swallow the property of the public trust, this Court is persuaded to grant stay to the impugned judgment and order. Therefore, Civil Application is allowed in terms of prayer clause (a). However, it requires to be mentioned that the Appellant shall not create any third party interests in respect of the suit property. Application is accordingly disposed of.”

(Emphasis added)

5. By said order, the Civil Application No. 631 of 2006 is allowed in terms of prayer clause (a). The said prayer clause (a) reads as under.

“(a) that pending the hearing and disposal of the above first appeal, the execution, implementation

and the taking of any steps in pursuance to the impugned judgment and decree dated 30th November, 2005, be stayed.”

6. Thus, it is clear that, by the said order dated 4th May, 2006 passed by the learned Single Judge in Civil Application No.631 of 2006 in First Appeal No.247 of 2006 the execution and implementation of the Judgment and Decree dated 30th November, 2005 passed by the learned Judge, City Civil Court, Mumbai in S. C. Suit No. 5551 1990 was stayed. The said order dated 4th May, 2006 of the learned Single Judge was challenged before the Hon'ble Supreme Court and the said Special Leave Petition was withdrawn on the ground that, the Petitioners would move the High Court. Accordingly, the said S.L.P. was withdrawn with liberty as aforesaid.

7. Pursuant to the liberty granted by the Hon'ble Supreme Court, the Civil Application No. 4252 of 2009 was filed in First Appeal No. 247 of 2006 and again prayer of injunction was made. The said Civil Application was dismissed by a learned Single Judge by order dated 28th January, 2010. It is significant to note the last paragraph of the said order which reads as under:-

“8. The appellants/defendants had applied for grant of stay to the decree passed by the trial court. This court has granted stay to the

judgment and the decree. The observations as made by this Court while granting stay become very material. This Court has virtually stayed the decree of injunction and this application is for injunction itself and, that it the reason why the contents of that order have become very material. The respondents/plaintiffs had in fact challenged that order of stay passed by this court before the Supreme Court but the applicants i.e. the respondents sought to withdraw that Special Leave Petition before the Supreme Court. Hence the order passed by this Court granting stay to the decree of injunction has thus attained finality. This Court while passing the said order has made following observations :-

“That document *prima facie* brings about the intention of the parties and reflects upon the nature of the document and transaction. If the man is placed in possession of the property as a manager then he cannot have a superior rights to claim injunction as against the owner of the property. The trial Court at number of places has observed that there is

no documentary evidence in respect of the possession produced by the respondent. In order to get a decree off perpetual injunction, the plaintiff-respondent is under an obligation to prove that he is in possession of the property and the said possession is referable to the lawful title. Prima facie, on analysis of the material placed before this Court, the plaintiff-respondent has not proved possession of the property, much more that the document is referable to the lawful possession.”

This court further observed that order thus :-

“The matter does not rest here. It is to be mentioned here that immediately after filing of the suit, notice of motion was taken out by the respondent bearing No. 4190 of 1990. However, ad-interim injunction was refused initially and after hearing both sides the otice of motion was disposed of by the City Civil Court. Thus, it shows that during the pendency of the suit there was no injunction order in favour of the present respondent-

plaintiff. Therefore, it is only when the decree has been passed, which is the subject matter of the present appeal, the order of perpetual injunction has come into force for the first time. However, in view of the above referred circumstances and looking to the fact that the property belongs to the public trust and person who claims to be a manager of the property is trying to snatch and swallow the property of the public trust, this court is persuaded to grant stay to the impugned judgment and order. Therefore, Civil Application is allowed in terms of prayer clause(a). However, it requires to be mentioned that the appellant shall not create any third party interests. In respect of the suit property. Application is accordingly disposed of.”

There is thus clear observation of this court while deciding the stay application **that prima facie the respondent-plaintiff has no right and he has not been in possession of the suit property. This Court further observed that even during pendency of**

the suit, the plaintiff's injunction application was rejected and his appeal was also dismissed. It is therefore obvious that the plaintiff was not in possession of the suit property. The plaintiff's attempts to challenge the stay order passed by this Court on the said application before Supreme Court also failed. In fact, therefore, all the above observations as made by this Court while passing stay order bind the parties during pendency of this Appeal. The defendants do not dispute having filed in the suit site with earth. Their contention is that they are running a school for visually handicapped children on the said site and in the rainy season water stagnates in that area and that becomes hazardous to the children. It is therefore submitted that this filing is being done free of costs to prevent water stagnating at the suit site and thus that will prevent any danger to the life and limb of the children. If that is the reason for filing the ground, then there is no reason to grant injunction. Safety of children has to be taken care of. The land is no more agricultural land. Therefore, even if it is so filled,

that would not diminish the value of the land. It seems to me that this application is filed by the respondents/plaintiffs only because this court passed an order granting stay and the Supreme Court has refused to interfere with. This is, therefore, an attempt to over come that order passed by this Court. I find that the observations made in the stay order passed by this Court bind the parties and also bind me. In the circumstances I find that the plaintiffs/respondents have no prima facie case. They have not proved their possession prima facie and therefore they are not entitled to to injunction. In the circumstances, this application for injunction stands rejected.

(Emphasis added)

8. The said order dated 28th January, 2010 passed by a learned Single Judge in Civil Application No. 4252 of 2009 in First Appeal No. 247 of 2006 was challenged by the present Petitioners before the Hon'ble Supreme Court and the said Special Leave Petition was dismissed as not pressed. The Supreme Court observed that the impugned order has no bearing on the pending appeal.

9. Thereafter, the First Appeal No. 247 of 2006 was finally decided by this Court and the said First Appeal was allowed. Paragraph No. 37 of the said order of a learned Single Judge dated 13th April 2022 passed in First Appeal No. 247 of 2006 reads as under :-

“37. The impugned judgment erroneously proceed on the basis that the relationship between the original defendant Nos. 4 to 4(d) and 8 and 9 would be governed by the provisions of Section 105 of the Transfer of Property Act, 1882, on the presumption that the Agreement dated 1st April 1973 was in fact a "Lease Agreement" and thus created leasehold rights over the 'Suit Property in favour of the original plaintiff. **Terming the same as a "Camouflage Agreement" and accepting the case of the original plaintiff, that the agreement in question was intended, as an agreement for agricultural farm manager services, only to avoid the application of the Bombay Tenancy and Agricultural Lands Act, 1948 and for which reason rent receipts were purportedly not issued, which is ex-facie contrary to the express language of the said Agreement dated 1st April 1973, and in the absence any proof being**

produced or lead in that regard by the original plaintiff. On perusal of Clause 10 of the said License Agreement expressly states that "Nothing herein above contained shall be deemed to construct as creating any rights of or under leave and license or otherwise of Tenancy in favour of THE FARM MANAGER in respect of work done by him under the terms of this Agreement.

Such a finding rendered in the impugned judgment, is in the teeth of Clause 10 of the said Agreement and clearly reflects a degree of perversity and non-application of mind."

(Emphasis added)

10. The said order dated 13th April 2022 of the learned Single Judge passed in the First Appeal was challenged in the Hon'ble Supreme Court and the Hon'ble Supreme Court dismissed the said Special Leave Petition by order dated 8th August, 2022. The order of the Hon'ble Supreme Court reads as under :-

1. Having heard learned senior counsel appearing on behalf of the parties, we are of the considered opinion that the impugned order does not warrant any interference under Article 136 of the Constitution of India.

2. The Special leave petition is, accordingly, dismissed.

3. However, it is left open to the petitioners to approach the Court of competent jurisdiction within a period of eight weeks from today. All contentions by the parties are left open to be raised in the proceedings, if any, initiated before the Court of competent jurisdiction.

4. **The Trial Court shall decide the injunction application, if any, on its own merits without being influenced by any of the observations made in these proceedings.**

5. **Status quo in respect of the possession over the land in dispute shall be maintained by the parties for a period of eight weeks.**

(Emphasis added)

11. Thereafter, the Petitioners filed T. D. Suit No. 123 of 2022 seeking declaration of tenancy and also filed Application bearing Exhibit-11 seeking injunction and by order dated 14th October, 2022, the learned Trial Court allowed the said Application and granted injunction as more particularly set out in the operative portion of the order.

12. The said order was challenged by Respondent Nos. 1 to 9 by filing M. Appeal No. 155 of 2022 and filed Application bearing Exhibit-9 seeking stay of the said order dated 14th October 2022.

By impugned order dated 5th December, 2022 the said Application at Exhibit -9 was allowed and the order of the learned Trial Court passed below Exhibit-11 in T. D. Suit No. 123 of 2022 dated 14th October, 2022 was stayed.

13. Perusal of all the aforesaid orders, clearly shows that, it has been consistently held that, the Petitioners and their predecessors were not in possession of the suit property. The orders passed by this Court are confirmed by the Hon'ble Supreme Court as the respective Special Leave Petitions are withdrawn.

14. Learned counsel appearing for the Petitioners has relied on various documents to show that, the Petitioners are in possession of the suit property. The first document is Agreement of appointment of Agricultural Farm Manager. The said document is of 1st April, 1973. However, it is an admitted position that, the said document specifically states that, the trustees appointed the said Hari Kisan Tiwari as a Farm Manager to look after the farm of the trust for a period of one year i.e. till 31st March, 1974. It is also an admitted position that, the said agreement was extended subsequently. However, the said agreement was terminated on 6th June, 1980 and thereafter, the trust executed the Development Agreement in favour of Respondent No. 10 on 2nd May, 1984. The

documents on record show that, thereafter, the IOD and CC was obtained in year the 1987 and the said construction has been completed in or about 1988. The learned counsel appearing for the Respondents submitted that, about Eight schools are functioning on the suit property. The said details are set out in paragraph No. 3.6 on page 183 of the Writ Petition compilation.

The same reads as under:

3.6. The said Trust has since been in peaceful and uninterrupted possession, use and occupation of the Subject Lands since the past 70 years. **As on date, the said Trust is running several schools and institutions on various portions of the Subject Lands with more than 2500 students.** The details of the schools and institutions being run by the said Trust is as under :-

Sr. No.	Name	Description	Location
1.	Armoday Vidya Mandir School	Pre-Primary, Primary and Secondary English Medium School	New CTS No. 1100A with playground in new CTS No. 1100B
2.	Balankur Marathi Medium School	Pre-Primary Marathi Medium School	New CTS No. 1100A with common playground in New CTS No. 1100B
3.	Bal Niketan Primary Marathi Medium School	Primary Marathi Medium School	New CTS No. 1100A with common playground in new CTS No. 1100B
4.	Dr. T. R. Naravane Marathi Medium School	Primary School, Junior College of Commerce	New CTS No. 1100A with common playground in New CTS No. 1100B
5.	Dr. Kusumtai Naravane School-Sanskriti Bhavan	Special Children and Children with disabilities	New CTS No. 1100C
6.	Sadaphooli Karya School	Special Children and Children with	New CTS No. 1100C

		Disabilities	
7.	Naravane Sports Academy	Sports Academy	New CTS No. 1100/G1 to 1100/G6
8.	Proposed School (under construction)	Pre-Primary, Primary and Secondary English Medium School	New CTS No. 1100/G1 to 1100/G6

(Emphasis added)

15. Learned counsel appearing for the Petitioners has also relied on letter dated 11th December, 2001 as well as letter dated 4th April, 2015. The said letters are written to the Petitioners or his predecessors in title by some third person.

16. Admittedly, the present Respondents are not parties to the said letters. For believing the case set out by the Petitioners, that they are in the continuous possession and user of the suit property from 1973 to 2023, the only documents pointed out are these two letters. Apart from that, the Petitioners have also relied on Collector's letter dated 3rd March, 2022. However, the said Collector's letter only says that, the Land in question is allotted for agricultural and educational purpose. The said letter of Collector is not helpful to the Petitioners to show that, they are in possession of the suit property. Apart from these documents, the Petitioners have also relied on certain tax receipts. However, the said tax receipts are self assessed tax receipts and do not show the possession of the Petitioners. The photographs on which the Petitioners are relying also do not *prima facie* show that, the

Petitioners are in possession of the suit property. It is significant to note that, the suit was filed in 1990 and the injunction was refused by the learned City Civil Court and an Appeal from order challenging the same was also dismissed. Thus, since 1990 till date there is no order of injunction operating in favour of the Petitioners. Therefore, no case is made out to substantiate the contention that the Petitioners are in possession of the suit properties.

17. The learned counsel appearing for the Petitioners has also relied on the decision of the Hon'ble Supreme Court in the case of **Prakash Roadlines Private Limited Vs. Oriental Fire and General Insurance Insurance Co. Ltd**¹. Learned counsel more particularly relied on paragraph No. 3 of the said Judgment which reads as under :-

“3. It is a settled law that a document has to be interpreted not by its nomenclature but what is contained in the said document. A reading of the document shows that it was a deed of assignment in favour of the insurance Company. We are, therefore, in agreement with the view taken by the High Court. Consequently, we do not find any merit in the appeal. It is accordingly dismissed. There shall be no order as to costs.”

(Emphasis added)

¹ 2000 (10) SCC 64

18. However, in the said Agreement of appointment of Agricultural Farm Manager dated 1st April 1973, clause No. 1 specifically states that, the trustees appointed said Hari Kisan Tiwari as a Farm Manager to look after the trust farm for a period of 1 year i.e. till 31st March, 1974 and in clause No. 10 it is specifically mentioned that, nothing herein above contained shall be deemed to construe as creating any rights of or under Leave and license or otherwise of Tenancy in favour of the Farm Manager in respect of the work done by him under the terms of this Agreement. Ms. Madhwani, learned counsel appearing for the Petitioners has relied on clause Nos. 3 to 5 and 8 of the said agreement to contend that, the Petitioners were deemed to be in continued possession of the suit property. However, the said agreement was thereafter extended and continued from time to time and ultimately was terminated. Therefore, there is no substance in the said contention.

19. In view of above, the Writ Petition is dismissed however, with no order as to costs.

20. It is clarified that, the various observations made in this order and the impugned order are only for the purpose of prima facie deciding the Injunction Application and that the suit filed by the Petitioners will be decided on its merits without being

influenced by the observation in these orders.

21. At this stage, learned counsel appearing for the Petitioners seeks status quo order or continuation of the status quo order. However, for the above reasons and as about seven schools are functioning on the suit property, the said request for status-quo is rejected.

(MADHAV J. JAMDAR, J.)