

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

WRIT PETITION NO.10452 OF 2022

Vishnuwardhan Abhaysinh GhorpadePetitioner
Versus
Kumar Shankar Mudgal & Ors. Respondents

Mr. S.S. Patwardhan, Advocate a/w. Ajay Rajenimbalkar,
Akshay Hardas i/b. Mrinal A. Shelar, for the Petitioner.

Mr. Rahul P. Kasbekar, Advocate for the Respondents.

**CORAM : SARANG V. KOTWAL, J.
DATE : 14th MARCH, 2023**

P.C. :

1. The Petitioner herein is the original Defendant No.1 in Regular Civil Suit No.145/2021 filed by the Respondent Nos.1, 2 & 3 herein. The suit was for declaration that the Respondent No.1, 2 & 3 have become owners by adverse possession. Another prayer was for declaration that the sale deed executed by the original Defendant No.2 be declared as not binding. The Plaintiffs i.e. the Respondent Nos.1, 2 & 3 preferred an application vide Exhibit-5 in Regular Civil Suit No.145/2021 for interim injunction before the trial Court. The said application was

rejected by the 3rd Jt. Civil Judge, Junior Division at Ichalkaranji vide order dated 12.10.2021. The said order was challenged by the Plaintiffs i.e. the Respondent Nos.1, 2 & 3 herein before the Appellate Court. The learned District Judge-1, Ichalkaranji vide his order dated 22.4.2022 passed in M.C.A. No.37/2021 allowed the appeal. He set aside the order passed by the trial Court below Exhibit-5 and restrained the Petitioner i.e. the Defendant No.1 and the original Defendant No.2 from causing obstruction to the possession of the Plaintiffs i.e. the Respondent Nos.1, 2 & 3 herein over the suit property. This order is under challenge in this Writ Petition.

2. Heard Shri S.S. Patwardhan, learned counsel for the Petitioner and Shri Rahul Kasbekar, learned counsel for the Respondents.

3. Learned counsel for the Petitioner submitted that the original Defendant No.2 had filed Regular Civil Suit No.394/2012 before the Court of Civil Judge, Junior Division at Ichalkaranji against the Respondent No.1 herein.

In that civil suit, the Respondent Nos.1, 2 & 3 had preferred an application for interim injunction vide Exhibit-29. The said application preferred by the Respondent Nos. 1, 2 & 3 was rejected by the trial Court in that suit vide order dated 20.11.2012. The Respondent Nos.1, 2 & 3 had preferred Appeal No.49/2012 against that order before the District Court. It was also dismissed.

4. The Respondent Nos.1, 2 & 3 filed Regular Civil Suit No.76/2013 against the Defendant No.2 (in the present proceedings) for specific performance. The Respondent Nos.1, 2 & 3 herein had preferred an application at Exhibit-5 for interim injunction in R.C.S. No.76/2013. Said application was rejected vide order dated 3.5.2013. The appeal preferred against that order was again dismissed by the District Judge-1, Ichalkaranji vide order dated 23.8.2016 passed in Misc. Civil Appeal No.37/2013.

5. Learned counsel for the Petitioner submitted that these two important orders were completely overlooked by the Appellate Court in the present proceedings and there is

absolutely no reason given as to why these orders have no bearing on the decision for considering the question of possession of the suit property.

6. Learned counsel for the Respondent Nos.1, 2 & 3 could not point out the reasoning in the Appellate Court's impugned order regarding these two orders.

7. Thus, in my opinion, these orders passed in the past proceedings between the Respondent Nos.1, 2 & 3 on the one hand and the Defendant No.2 (in the present proceedings) on the other have very important bearing on the determination of question regarding possession of the suit property. This particular aspect was not considered by the appellate Court and, therefore, it is necessary to remand the matter back to the Appellate Court for fresh decision for taking into account these orders referred to hereinabove. With the result, the following order is passed :

:: O R D E R ::

- i. The order dated 22.4.2022 passed by the District Judge-1, Ichalkaranji in M.C.A. No.37/2021 is set

aside. M.C.A. No.37/2021 is remanded back to the file of the District Judge, Ichalkaranji for fresh consideration.

- ii. The learned Judge shall take into account the orders, referred hereinabove, before arriving at the decision in this appeal. All the questions are specifically left open to be decided by the appellate Court afresh.
- iii. With these observations, the Petition is disposed of.

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by
PRADIPKUMAR
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(SARANG V. KOTWAL, J.)