



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

WRIT PETITION NO.387 OF 2024

1. Sunita wd/o Ishwar Jarlle, Aged about 45 years, Occ. Household,
2. Avinash s/o Ishwar Jarlle, Aged about 33 years, Occ. Agriculturist,
3. Swapnil s/o Ishwar Jarlle, Aged about 31 years, Occ. Agriculturist,
4. Tushar s/o Ishwar Jarlle, Aged about 28 years, Occ. Agriculturist,
5. Ku. Ankita d/o Ishwar Jarlle, Aged about 19 years, Occ. Education, All R/o Dhamangaon, Tah. Samudrapur, Dist. Wardha. Original Plaintiffs

...Petitioners

// VERSUS //

Suresh s/o Jaikrishna Patil, Aged about 59 years, Occ. Service, R/o G-102, Classic Pawan Apartment, Hingna Rd, Nagpur, Tah. & District- Nagpur. Original Defendant.

... Respondent

Mrs. Smita P. Deshpande, Advocate for Petitioner.
Shri S.J. Patil, Respondent in person.

CORAM : ANIL S. KILOR, J.
DATED : 29th APRIL, 2024

ORAL JUDGMENT

1. Heard.

2. **RULE.** Rule is made returnable forthwith. Heard finally by consent of the parties.

3. In a suit filed by the petitioners/plaintiffs for cancellation of registration of sale deed and for permanent injunction, the application Exh.5 was moved seeking injunction against the defendant to restrain him from disturbing the possession of the plaintiff over the suit land.

4. It is the case of the plaintiff that, the sale deed dated 23.06.2011 executed in favour of the defendant by the plaintiff is towards security and out of money lending transaction. It is, therefore, submitted that, though the sale deed was executed, the plaintiffs never handed over the possession of the suit property to the defendant.

5. The learned trial Court rejected the application Exh.5 vide order dated 15.12.2020 which was subject matter of challenge before the learned lower appellate Court in Misc. Civil Appeal No.02 of 2023. The learned lower appellate Court confirmed the order of the learned trial Court and dismissed the appeal. Hence, this petition.

6. I have heard Mrs. Deshpande, learned counsel for the petitioner and respondent in person.

7. The learned counsel for the plaintiffs/petitioners has drawn attention of this Court to the orders passed by the Tahsildar dated 14.10.2021 and 11.01.2023 on the applications moved by the petitioners to enter his name in the 7/12 extract in the column of possession.

8. Both the orders supports the case of the petitioners as regards their possession over the suit property.

9. The respondent is not disputing the fact of passing of said orders and that, he has not challenged the orders though the orders are against him and he was party to the said proceeding.

10. It is apparent from the face of both the orders that, the finding recorded as regards the possession of the petitioners over the suit property is based on the report of the Talathi, Dhamangaon. Thus, to arrive at a conclusion that, the petitioners are in possession of the suit land there is report of the Talathi a Revenue Officer and therefore, I am of the opinion that, both the Courts below have committed error in holding that, the petitioners failed to prove their possession over the land in question. In the circumstances, I pass the following order :

i) The writ petition is **allowed**.

- ii) The order dated 29.04.2023 passed below Exh. 5 by the Jt. Civil Judge Junior Division, Samudrapur in Regular Civil Suit No.36 of 2020 and the judgment and order dated 05.10.2023 passed by the District Judge-1, Hinganghat, Dist. Wardha in Misc. Civil Appeal No.02 of 2023, are hereby quashed and set aside and consequently, Exh.5 is **allowed.**

Rule is made absolute in above terms. No costs.

(ANIL S. KILOR, J)

C.L.Dhakate