



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 911 OF 2025

Pralhad Kalyan Vanve,
Age : 62 years, Occu. : Agril.,
R/o. Rameshwar, Tq. Bhoom,
Dist. Osmanabad.

.. Petitioner
(Org. Plaintiff)

Versus

1. Pravin Popat Darade,
Age : 29 years, Occu. : Agri.,
R/o. Rameshwar, Tq. Bhoom,
Dist. Osmanabad.
2. Pramod Popat Darade,
Age : 27 years, Occu. : Agri.,
R/o. As above.
3. Pratibha Kiran Jadhavar,
Age : 33 years, Occu. : Household,
R/o. : Aurangabad
Tq. & Dist. Aurangabad.

.. Respondents
(Ori. Defendants)

Mr. K. R. Doke, Advocate for the Petitioner.
Mr. A. P. Bhandari, Advocate for Respondent Nos. 1 and 2.
Mr. S. S. Gangakhedkar, Advocate for Respondent No. 3.

CORAM : KISHORE C. SANT, J.

Date on which reserved for order : 21st January, 2025.

Date on which order pronounced : 24th February, 2025.

FINAL ORDER :-

. This writ petition is by original plaintiff in R.C.S. No. 87/2023.

The respondents are original defendants in the said suit. In the suit, application filed by the plaintiff below Exh. 5 came to be allowed by granting injunction against the defendants. The defendants preferred Misc. Civil Appeal No. 8/2023. The said appeal came to be allowed and thus the original plaintiff is before this Court.

2. The facts in short giving rise to this petition are as below :

3. The parties are referred as per their original status in the suit for the sake of convenience. The plaintiff filed a suit for declaration and injunction in respect of the suit land. It is the case that, the plaintiff purchased a land Gat No. 375 admeasuring 3H 87R from village Ulup, Taluka Bhoom, District Dharashiv from original owner Rohidas Kamble vide sale deed dated 03.11.1992 for consideration. The said Rohidas Kamble, however, again executed a bogus and nominal sale deed in favour of one Shaikh Karim Shaikh Shahajan. The L.Rs. of Shaikh Karim sold the land to defendants by sale deed dated 27.12.2022. However, the plaintiff is in possession since 1992 on the strength of sale deed by the original owner. The defendants on the basis of the sale deed in their favour tried to dispossess the plaintiff and obstructed his possession over the suit property. The plaintiff therefore filed the suit. In the suit, he filed an application below Exh. 5. The learned Trial Judge by order dated 10.02.2023 allowed the said application. In an

appeal by the defendants the learned District Judge-1, Bhoom allowed the appeal and set aside the order passed by the learned Trial Judge on Exh. 5 application. The plaintiff is thus before this Court.

4. The learned advocate Mr. Doke for the petitioner/plaintiff vehemently argued that, the learned District Judge has passed the order illegally. There was no ground to set aside the well reasoned order passed by the learned Trial Judge. The learned Trial Judge had rightly considered that, the first sale deed by the original owner of the land is in favour of the plaintiff. The plaintiff has come in possession on the strength of said sale deed. He thus prays for confirming the order passed by the learned Trial Court by setting asid an order passed by the learned District Judge in Misc. Civil Appeal.

5. The learned advocate for respondent Nos. 1 and 2/defendants Mr. Bhandari vehemently opposed the petition. It is their case that, the sale deed in favour of the plaintiff was without obtaining sanction as required under Sections 28 and 29 of the Maharashtra Agricultural Lands (Ceiling on Holding) Act, 1961 (for short “Act of 1961”). On the basis of such sale deed the plaintiff would not get any right and title over the suit property. When the property was purchased by Shaikh Karim, Rohidas was still shown as owner of the property in revenue

record. The said Rohidas is not made party to the suit. The suit itself is bad for non joinder of necessary party. So far as the sale deed in favour of the these defendants is concerned, he submits that, the defendants had applied for permission to the authorities before entering into sale transaction. The permission was duly granted by the authorities and it is only thereafter transaction was completed. It is specific case that, the application by the plaintiff for regularization of his sale transaction was rejected. There is no prayer made in the plaint to declare the sale deed in his favour as legal and void. The suit is filed only for injunction. He submits that, the learned Trial Court has failed to interpret Section 29 of the Act of 1961. The documents considered by the learned Trial Court nowhere show the name of the plaintiff as owner, neither his possession is reflected in the revenue record.

6. The learned advocate Mr. Gangakhedkar for defendant No. 3 adopts the arguments of defendant Nos. 1 and 2. In addition he submits that, the plaintiff has taken paradoxical stand. It is the case that, plaintiff cannot take defence that he was unaware of statutory provision. The learned District Judge rightly considered that the purchase of the suit land by the legal heirs of Shaikh Karim was by obtaining previous sanction of the Collector. There is no challenge to later sale deed executed by Shaikh Karim, prior to executing the sale

deed in favour of the defendants, there was proclamation issued showing that permission was sought from the authorities. This publication was by the Tahsildar, Bhoom. In spite of such public notice, no objections were raised by the plaintiff. He submits that, there was a suit bearing R.C.S. No. 239/1995 between one Abdul Khan Vs. Shaikh Karim and another that is against the vendor of defendant Nos. 1 to 3. In the said R.C.S. temporary injunction application filed by the vendor of the petitioner was allowed and the plaintiff therein was restrained from obstructing the possession of the vendor. He thus submits that, the possession is already held to be with all the defendants. It is thus clear that, it was the vendor of the defendants who was in possession. This finding is recorded by the Civil Court though at the interim stage.

7. In rebuttal, learned advocate for the plaintiff submits that, the suit is not filed for injunction, but is also for declaration. The plaintiff has later on filed application below Exh. 65 seeking amendment to the prayers in the suit. So far as the earlier order is concerned, it shows that, it was at the interim stage and the finding has not attained finality. He submits that, the Court has allowed to produce the documents on record.

8. Considering all above, the question is as to whether the learned Appellate Judge has rightly interfered with the order passed by the

learned Trial Judge. As appears clearly from the record, the claim of the plaintiff is on the basis of sale deed executed in his favour by the original owner Rohidas Kamble. It is his case that, he became owner of the suit land and he came in possession whereas, the claim of the defendants is that their vendor Shaikh Karim had purchased the land by obtaining permission from the Collector as required under the Act of 1961. In the plaint also it is stated by the plaintiff that, though land was sold to the plaintiff, in 7/12 extract the entry was still shown in the name of Rohidas. It is not stated in the plaint that, prior to entering into sale transaction any permission was obtained from the authorities under Section 29 of the Act of 1961.

9. Coming to the reasoning by the learned Trial Court it is seen that, the learned Trial Court has considered the description of the property in the sale deed. The defendants failed to show that Rohidas was in need of money and therefore, he executed sale deed to secure the debt taken from plaintiff and therefore, the possession was not handed over to him. It is thus seen that, the learned Trial Judge shifted negative burden on the defendants.

10. From the reasoning given by the learned District Judge it is seen that, the learned District Judge has considered that the sale deed dated 27.12.2022 was entered between the heirs of Shaikh Karim and

defendants by obtaining previous sanction from the Tahsildar. Even the sale deed in favour of vendor Shaikh Karim dated 20.01.1995 was executed after obtaining previous sanction from the Collector. He considered that the plaintiff has not challenged the sale deeds executed in favour of Shaikh Karim and defendants. He has also not challenged the entries standing in their names. It is thus concluded that the defendants have become owners illegally and they were put in possession. It is also considered that before seeking permission the land was got measured in the year 1995. No objection was raised to the said measurement by the plaintiff. Had plaintiff been in possession, certainly, he would have taken objection to the measurement. The Court further considered that since 1992 plaintiff never tried to get his name mutated in the suit land.

11. The learned advocate for the petitioner/plaintiff relied upon the following judgments :

- (i) **Ramakant Ambalal Choksi Vs. Harish Ambalal Choksi & others** in Civil Appeal No. 13001/2024.
- (ii) **Kaushik Premkumar Mishra Vs. Kanji Ravaria**
Alias Kanji reported in **2024 (5) ABR 124**.
- (iii) **Gurbax Singh Vs. Kartar Singh and others**
reported in **AIR 2002 SC 959**.

(iv) S. G. Thrupthi Vs. P. Veena reported in AIROnline 2019 Kar 1164.

(v) Rame Gowda (D) by L.Rs. Vs. M. Varadappa Naidu (D) by L.Rs. And another reported in AIR 2004 SC 4609.

12. In the case of Ramakant Ambalal Choksi (*supra*), the Hon'ble Apex Court considered the judgment in the case of Wander Ltd. V. Antox India P. Ltd. reported in 1990 Supp SCC 727. The Hon'ble Apex Court considered the tests while causing interference in the judgment or order passed by the learned Appellate Court.

13. In the case of Kaushik Premkumar Mishra (*supra*), a second sale deed was executed after 26 years after initial transfer without disclosing the earlier transaction and litigation that was going on in respect of the properties.

14. In the case of Gurbax Singh (*supra*), the two documents were executed on the same day in respect of the same property. The Court has held that, the one prior in time would determine the priority irrespective of the time of their registration.

15. In the case of **S. G. Thrupthi** (*supra*), the Court considered as to what is sale.

16. In the case of **Rame Gowda** (*supra*), the Court considered the rights of the trespasser.

17. This Court finds that, about the judgment in the case of **Ramakant Ambalal Choksi** (*supra*), there is no dispute of the proposition that the learned Appellate Court shall not cause interference unless the case is made out of perverse finding recorded by the learned Trial Court. There is also no doubt that the order passed by the learned Trial Court shall not be lightly interfered by the Appellate Court.

18. The learned advocate for respondent Nos. 1 and 2 relied upon the judgment in the case of **Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by L.Rs.** reported in **2008 AIR SCW 2692.**

19. The learned advocate for respondent No. 3 relied upon the judgment in the case of **Nanded City Development and Construction Company Ltd. Vs.Laxman Eknath Dedge and others** reported in **2023 SCC Online Bom 2317.**

20. In the case of **Anathula Sudhakar** (*supra*), the Hon'ble Apex

Court summarized the position with regard to the suits for prohibitory injunction relating to immovable property. Paragraph No. 17 of the judgment in the said case reads as below :

“17. To summarize, the position in regard to suits for prohibitory injunction relating to immovable property, is as under :

(a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in *Annaimuthu Thevar* (supra)]. Where the averments regarding title are absent in a plaint and where there is no

issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straight-forward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.”

21. In the case of Nanded City Development and Construction Company Ltd. (*supra*), this Court considered the judgments in the case of Dalpat Kumar Vs. Prahlad Singh reported in (1992) 1 SCC 719 by the Hon’ble Apex Court and in the case of Union of India Vs. Raj Gro Impex LLP reported in 2021 SCC OnLine SC 429. The case of Dalpat

Kumar was considered for looking the prima facie case for grant of temporary injunction. It is held in the case of Dalpat Kumar that, the prima facie case itself is not sufficient to grant injunction. The Court has to further satisfy itself that non-interference by the Court would result in irreparable injury to the parties litigating. The Court also further considered irreparable loss and balance of convenience. In the case of Union of India it is held that, mere prima facie case in favour of plaintiff is not sufficient. The Court has to see balance of convenience and irreparable injury likely to be caused.

22. This Court thus has to consider that, as to whether prima facie case is made out by the plaintiff, further, as to whom irreparable loss would cause and in whose favour balance of convenience. So far as prima facie case is concerned, as is already observed, it is not a case even of the plaintiff that the sale deed executed in his favour was executed by obtaining sanction as required under Section 29 of the Act of 1961. The plaintiff is silent on this aspect. There are no arguments advanced though the learned District Judge has also considered this aspect specifically. So far as prima facie case in favour of defendants is concerned, it is specifically considered that the sale deed executed in favour of Shaikh Karim was executed by obtaining requisite permission from the authority. Even the sale deed of 2022 in favour of defendants

is by obtaining requisite permission. This would prima facie shows the sale deeds are executed after obtaining the permission. So far as the sale deed in favour of plaintiff is concerned, no such material is coming on record. Thus, on prima facie consideration it is seen that, the sale deed in favour of defendants appears to be prima facie valid and legal.

23. While considering the balance of convenience and irreparable loss this Court finds that, the learned District Judge has rightly observed that, since 1992 no attempt appear to have been made by the plaintiff to get his name mutated in the revenue record. On the contrary, the name of Shaikh Karim is appearing in 7/12 extract and this was the position till defendants purchased the property. This fact prima facie would clearly show that, the possession is with the defendants and not with the plaintiff. Thus, on the count of irreparable loss and balance of convenience also this Court finds that, the plaintiff failed to show that he would suffer irreparable loss and that balance of convenience lies in his favour. This is more so on the background that, the plaintiff has not challenged the execution of sale deed in favour of Shaikh Karim and even in favour of the defendants. Subsequent amendment seeking to add prayer in respect of subsequent sale deeds would not help the plaintiff.

24. Thus, considering all above this Court finds that, the plaintiff has

failed to show prima facie case. The learned Trial Court only went on assumptions without considering these aspects. The learned District Judge has rightly considered all the factors and then passed the order. No illegality or perversity is found in the order passed by the learned District Judge. He rightly interfered with the finding and the order passed by the learned Trial Court in the suit. The Court is thus of the opinion that, the petition deserves to be dismissed. Hence, the following order :

25. The writ petition stands dismissed. No order as to costs.

26. Needless to say that, all these observations are only prima facie.

(KISHORE C. SANT, J.)

PS.B.