



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

30 WRIT PETITION NO. 2916 OF 2024

1. Laxmi Lahu Kadam,
Age : 42 years., Occu. Household,
& Agri., r/o Jalkot,
Tq. Tuljapur, dist. Osmanabad ...Petitioner

VERSUS

1. Dilip s/p Suresh Somvanshi
Age : 59 yrs., occu. Agril.
R/o Salgara (Tatar),
Tq. Tuljapur, Dist. Osmanabad
2. Sau Chayabai w/o Dilip Somvanshi,
Age : 59 Yrs., occu. Agril.
R/o Salgara (Tatar),
Tq. Tljapur, Dist. Osmanabad.
3. Lahu S/o Kushaba Kadam,
Age : 52 Yrs., occu. Agril.
R/o Jalkot, Tq. Tuljapur,
Dist. Osmnabad
4. Tahsildar, Tuljapur,
Tq. Tuljapur, Dist. Osmanabad.
5. Block Development Officer,
Panchayat Samiti, Tuljapur,
District Osmanabad ...Respondents

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Mr. S. S. Thombre, Advocate for the Petitioner
Mr. Santosh N. Patne, Advocate for Respondent Nos.1 & 2

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CORAM : ROHIT W. JOSHI, J.
DATED : 4th AUGUST 2025

ORAL JUDGMENT :-

1. The present petitioner is wife of respondent no.3. The suit property comprises of agricultural land which is purchased by respondent no.3 from respondent nos.1 and 2 vide registered sale deed dated 20.10.2011. Respondent nos.1 and 2 have initiated proceedings under the Maharashtra Money-Lending (Regulation) Act, 2014 for cancellation of the sale deed. Respondent nos. 1 and 2 contend that the sale deed was an outcome of a money lending transaction and executed only as a security for the loan advanced by respondent no.3 to them. In the proceedings filed under the provisions of Money Lending Act an inquiry was ordered in which it is found that *prima facie* respondent nos.1 and 2 are in possession of the suit property. The petitioner and her minor son namely Shrikrushna Kadam had filed a suit being Regular Civil Suit No.454 of 2016 against respondent no.3 for partition and separate possession of the suit property. This suit is disposed of on 24.01.2017, in view of amicable settlement between the petitioner and respondent no.3. In terms of the out of court settlement, the suit property is stated to be granted to the petitioner permanently in view of her maintenance.

2. The present petition arises out of Regular Civil Suit No.160 of

2018 which is filed by the petitioner (wife) seeking decree of perpetual injunction against respondents who are the vendors of her husband, and her husband from disturbing her alleged possession over the suit property in the said suit. The petitioner had filed an application for grant of temporary injunction vide 'Exhibit-5'.

3. The application for grant of temporary injunction is rejected by the learned Trial Court vide order dated 13.08.2018. The learned Trial Court has held that respondent nos.1 and 2 had *prima facie* proved their possession over the suit property. The learned Trial Court has referred to the spot panchanama prepared by the Talathi and a report pursuant to the directions issued by the Assistant Registrar of Co-operative Societies in exercise of powers under the provisions of the Money-Lending Act. The learned Trial Court has also referred to affidavit of adjoining land owners who had indicated possession of respondent nos.1 and 2 over the suit property. Referring to the sale deed, learned Trial Court has also observed that there is no reference of delivery of possession of the suit property by respondent nos.1 and 2 to respondent no.3 in the said sale deed. In view of the above, the learned Trial Court has rejected the application for grant of temporary injunction.

4. The petitioner assailed this order rejecting the application for grant of temporary injunction by filing appeal under Order 43 Rule 1(r) of Civil Procedure Code being Miscellaneous Civil Appeal No.57 of 2018 which came to be dismissed vide order dated 12.12.2023 passed by the learned Appellate Court.

5. The learned Appellate court has generally concurred with the findings recorded by the learned Trial Court. The learned Appellate Court has also observed that the rival contentions with respect to the sale deed will have to be adjudicated on merit and that till such time the report by the Assistant Registrar showing possession of respondent nos.1 and 2 over the suit property and also affidavits of adjoining owners were required to be relied upon in order to determine *prima facie* who is in possession of the suit property. In view of the such documents, the learned Appellate Court has held that the petitioner/plaintiff had failed to *prima facie* establish her possession over the suit property.

6. Both the Courts have concurrently held that *prima facie* respondent nos. 1 and 2 appears to be in possession of the suit property. The findings are based on material on record. The petitioner is not in a position to point out any contrary material to demonstrate possession over suit property, except for the compromise decree in the

earlier suit filed by her against her husband/respondent no.3 and a letter dated 27.11.2020 issued by the Gramsevak to the Tahsildar, Tuljapur stating that respondent nos.1 and 2 had obtained his signature on the Panchanama showing their possession over the suit property by exerting pressure on him and by threatening him. In this regard, it needs to be mentioned that the order rejecting the application for grant of temporary injunction is dated 13.08.2018. This letter is dated 27.11.2020, the Panchanama is carried out in the year 2018 prior to 13.08.2018 i.e. date on which application for grant of temporary injunction is rejected. The statement in the letter dated 27.11.2020 is a bald statement lacking in all material particulars. *Prima facie* the allegations made in the letter dated 27.11.2020 do not inspire confidence. Moreover this letter is issued after the application for temporary injunction was rejected by the learned Trial Court.

7. In view of the above, in the considered opinion of this Court, no case is made out for interference with the concurrent orders. The petition is without any merit and is accordingly **dismissed** with no order as to costs.

8. Needless to observe that the observations are only for the purpose of determining *prima facie* case and will not be binding on

the learned Trial court while deciding the suit on merits.

[ROHIT W. JOSHI, J.]