

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

943 WRIT PETITION NO. 3432 OF 2024

Shri Ganeshlal s/o Harinarayan Chandak,  
Age: 84 years, Occu- Agri and Business,  
Through Power of Attorney Holder,  
Shri Nandkishor s/o Ganeshlal Chandak  
Age-46 years, Occu-Agri and Business,  
R/o Murud, Tq. & Dist. Latur.

...Petitioner

**VERSUS**

1. Shri Parshwanath s/o Shankarrao Bhajibhakre,  
Age-51 years, Occu- Agri and Business  
R/o-Market Yard Road, Bhajibhakre Nagar,  
Murud, Tq. & Dist. Latur,
2. Shri. Siddharth s/o Shankarrao Bhajibhakre,  
Age-43 years, Occu- Agri and Business  
R/o-Market Yard Road, Bhajibhakre Nagar,  
Murud, Tq. & Dist. Latur.
3. Shri. Snehit s/o Babulal Baheti,  
Age-34 years, Occu- Agri and Business,  
R/o Paru Nagar, Murud, Tq. & Dist. Latur.
4. Saraswati w/o Parshwanath Bhajibhakre  
Age-44 years, Occu- Household,  
R/o- Market Yard Road, Bhajibhakre Nagar,  
Murud. Tq. & Dist. Latur.
5. Parshavdeep s/o Parshwanath Bhajibhakre,  
Age-33 years, Occu- Service,  
R/o- Market Yard Road, Bhajibhakre Nagar,  
Murud, Tq. & Dist. Latur.
6. Parshavkiran s/o Parshwanath Bhajibhakre,  
Age-28 years, Occu-Business,  
R/o- Market Yard Road, Bhajibhakre Nagar,  
Murud, Tq. & Dist. Latur.
7. Priya w/o Siddharth Bhajibhakre,  
Age-38 years, Occu- Household,

R/o- Market Yard Road, Bhajibhakre Nagar,  
Murud, Tq. & Dist. Latur.

8. Shantanu s/o Siddharth Bhajibhakre,  
Age 22 years, Occu- Education,  
R/o. Market Yard Road, Bhajibhakre Nagar  
Murud, Tq. & Dist. Latur

...Respondents

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Mr.Rameshwar F. TotalA a/w. Mr. Swapnil V. Lohiya i/b. Mr.Shrigopalji  
V. Kabra, Advocate for the Petitioner.

Mr. P. P. More, Advocate for Respondent No.3

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**CORAM : ROHIT W. JOSHI, J.**

**DATED : 17<sup>th</sup> JULY 2025**

**ORAL JDUGEMENT :-**

1. Present petitioner is the original plaintiff who has filed a suit for specific performance of contract in Special Civil Suit No.224 of 2022.

2. It is the case of the petitioner that he had entered into an agreement of sale with respect to the suit property with defendant nos.1 and 2 on 01.06.2018. The plaintiffs contends that disregarding the agreement entered into between the parties the defendant nos.1 and 2 sold the suit property to the defendant no.3 vide sale deed dated 08.03.2022. The plaintiff claims to be in physical possession of the property on the basis of the agreement of sale. The plaintiff has prayed for cancellation of sale deed dated 08.03.2022, specific performance of contract and for perpetual injunction restraining the defendants from disturbing his physical possession over the suit

property.

3. Defendant Nos.1 and 2 entered appearance in the matter on being served with the suit summons and denied the agreement. It is their case that the plaintiff had advanced certain amount to them and had obtained their signatures on blank stamp papers. It is contended that it is in view of the aforesaid, for a period of around four years the plaintiff was completely silent after execution of the alleged agreement of sale. The defendant nos. 1 and 2 denied that plaintiff was in physical possession of the suit property.

4. The plaintiff also filed an application for grant of temporary injunction in the said suit. The learned Trial Court has allowed the said application for grant of temporary injunction vide order dated 23.11.2022. The learned Trial Court has referred to the agreement wherein there is averment regarding delivery of possession of the suit property by defendant nos.1 and 2 to the plaintiff. Apart from this, the learned Trial Court has taken into consideration that there is a water pipeline in the Well situated in the suit property in which there is a pipeline which according to the Trial Court is installed by the plaintiff. On this basis, the learned Trial Court has held that the plaintiff has made out a *prima facie* case as regards his physical possession over the suit property.

5. This order dated 10.08.2023 allowing the application for grant of temporary injunction came to be assailed by respondent no.3, the purchaser of the suit property, by filing an appeal being Miscellaneous Civil Appeal No.03 of 2023. The said appeal is allowed by the learned Principal District Judge, Latur vide judgment dated 12.03.2024. The learned Principal District Judge has held that the alleged agreement is an unregistered document and therefore plaintiff cannot take shelter under Section 53-A of the Transfer of Property Act, 1882. Apart from this, the learned first Appellate Court has disbelieved the case of the plaintiff in view of long silence on his part for a period of around four years from the date of execution of the agreement of sale. The learned Appellate Court has also taken into consideration entries in 7/12 extracts showing possession of the defendant nos.1 and 2, vendors, and thereafter defendant no.3-purchaser. The Appellate Court has thus allowed the appeal by reversing the order of temporary injunction passed by the learned Trial Court. This judgment and order dated 12.03.2024 is impugned by the original plaintiff in the present petition.

6. The contention of the learned Advocate for the petitioner is that the learned Appellate Court has erred in giving undue importance to the fact that the agreement is not a registered document. It is contended that the observations of the learned Appellate Court with

respect to registration of the document are completely irrelevant and are also contrary to the settled legal position with respect to need for registration of an agreement of sale. As regards the physical possession, the learned counsel contends that the findings by the learned Trial Court with respect to pipeline ought not to have been disturbed by the learned First Appellate Court.

7. Per contra, the learned Counsel for respondent no.3-purchaser contends that the learned First Appellate Court has rightly dealt with the matter having regard to the fact that there was silence on the part of the plaintiff for a period of around four years, since the date of execution of agreement of sale. He contends that the entries in revenue records which are *prima facie* proof of possession were always in the names of vendors-defendant nos.1 and 2 thereafter in the name of purchaser-defendant no.3. The learned Advocate therefore states that the petition is devoid of any substance and should be dismissed as such.

8. Having heard the rival submissions as aforesaid, this Court is of firm opinion that the findings by the learned First Appellate Court with respect to the registration of document are legally unsustainable. In view of the proviso to Section 49 of the Registration Act, 1908 an unregistered agreement of sale is admissible in evidence in a suit for specific performance of contract. As regards Section 53-A, it is true

that after 2001 amendment to Registration Act, 1908 registration of agreement of sale coupled with possession is mandatory in order to seek protection under Section 53-A of the Transfer of Property Act, 1882. However, protection under Section 53-A and protection of possession by way of injunction under Specific Relief Act, 1963 are two different aspects. Injunction against forcible dispossession as covered by the provisions of the Specific Relief Act, 1963 for relief of perpetual injunction and by Order 39 of Code of Civil Procedure for temporary injunction. The said injunction operates only against dispossession without due process of law. However, Section 53-A is ranked on a higher pedestal. A person who is able to establish the ingredients of Section 53-A of Transfer of Property Act, 1882, can successfully oppose a suit for possession also on the basis of physical possession under the said provision. Thus the legal position which emanates is that even if an agreement of sale coupled with possession is not registered, the person in possession can claim a decree for perpetual injunction against forcible dispossession under the Specific Relief Act, 1963 as also temporary injunction under the Code of Civil Procedure. The only embargo is that he cannot claim protection of possession under Section 53-A of the Transfer of Property Act, 1882. The findings of the learned First Appellate Court are clearly contrary to law and are liable to be discarded.

9. However, that is not the end of the matter. What is required to be seen is, *prima facie*, who is in possession of the suit property. It must also be borne in mind that this Court cannot decide the matter as a Court of first instance or a Court of Appeal. This Court is only supposed to examine as to whether the learned Courts have applied the parameters regulating grant of temporary injunction properly and further if the findings recorded can be said to be perverse.

10. The learned Trial Court has granted order of temporary injunction relying on the agreement in which there is an averment regarding delivery of possession. There is a Spot Panchanama conducted which shows alleged possession of the plaintiffs over the suit property which is discarded by the learned Trial Court on the ground that the same was conducted without notice to defendant Nos.1 and 2. The learned Trial Court has then laid emphasis on the pipeline in the well situated in the suit property. On the basis of existence of pipeline coupled with covenant in the agreement regarding delivery of possession it is held that plaintiff has *prima facie* proved possession over the suit property.

11. The learned Appellate Court while reversing the order passed by the learned Trial Court has held that although the agreement is stated to have been entered on 01.06.2018, the plaintiff did not take any effective steps for execution of the sale deed pursuant to the said

agreement for an inordinately long period around four years. With respect to the pipeline, the learned Appellate Court has disbelieved the version of the plaintiff. The learned First Appellate Court has also considered the entries in Revenue Records which are standing in the names of defendant nos.1 and 2- vendors and thereafter in the name of defendant no.3-purchaser.

12. The contention of the learned Counsel for the petitioner is that since the payment of Rs.3,00,000/- is made by cheque genuineness of sale transaction should not be doubted. Payment of amount by cheques cannot be an explanation for silence of an inordinate period of more than four years. A money lending transaction can also be done by advancing money by cheques.

13. As regards the statements of two individuals referred by the learned counsel for the petitioner, they do not appear to be of adjoining land owners. The learned counsel for the petitioner further contends that sale deed could not be executed due to formalities pertaining to area connectivity which was not done. He contends that plaintiff was regularly in touch with defendant nos.1 and 2. In this regard he has drawn attention to Whats App communications between the parties which is placed on record. The learned Trial Court has also not dealt with said alleged communication between the petitioner and defendant nos.1 and 2.

14. It is well settled that although entries in revenue records are not document of title, they raises a presumption with respect to possession. The material brought on record by the plaintiff is insufficient to dislodge the presumption which arises from revenue entries. As rightly pointed out by the learned First Appellate Court, the plaintiff has not taken any steps for enforcement of the agreement for a long period of four years. This casts a doubt with respect to genuineness of the transaction in the sense as to whether the agreement was in essence a genuine agreement of sale. The findings recorded by the learned First Appellate Court cannot be said to be perverse. The learned First Appellate Court has applied its mind to the material on record to arrive at a *prima facie* finding of fact which in the opinion of this Court need not be reversed.

15. In view of the aforesaid, in the considered opinion of this Court, no case is made out by the petitioner warranting interference with the judgment and order passed by the learned First Appellate Court. The petition is therefore dismissed.

**[ROHIT W. JOSHI, J.]**