



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

970 WRIT PETITION NO. 4352 OF 2024

1. Shivaji Sitaram Patil
Age : 58 years, Occ. Agri.

2. Sambhaji s/o Shivaji Patil
Age : 33 years, occ. Agri.

Both R/o Kalmadu, Tq. Chalisgaon,
Dist. Jalgaon

...Petitioners

VERSUS

1. Bhagabai Vasant Patil
Age : 71 years, occ. Agri.,
R/o. C/o Khushal Vasant Patil,
At Shevage Pra. Bahad, Tq. Parola,
Dist. Jalgaon

2. Gayabai Bhagwan Patil
Age : 65 years, Occ. Agri.,
R/o. C/o Bhagwan Gangaram Patil,
At Anjanvihire, Tq. Bhadgaon,
Dist. Jalgaon

...Respondents

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Mr. A. K. Tiwari, Advocate for the Petitioner

Mr. D. A. Madake, Advocate for Respondent Nos.1 and 2.

...

CORAM : ROHIT W. JOSHI, J.

DATED : 19th JUNE 2025

JUDGMENT:-

1. The present petitioners are original defendants in Regular Civil Suit No.63 of 2020 and the respondents are the original plaintiffs. The respondents are real sisters. Petitioner no.1 is their cousin being son of paternal uncle. Petitioner No.2 is son of the petitioner no.1.

The respondents are undisputedly owners of the suit property which is an agricultural land bearing gut no.506/1 admeasuring 1.60 HR situated at Village Kalmadu, Taluka Chalisgaon, District Jalgaon.

2. The respondents have filed a suit for perpetual injunction restraining the petitioners from disturbing their possession over the suit property. The suit is filed claiming ownership rights and possession over the suit property. In this suit, respondents also filed an application for grant of temporary injunction under order 39 Rules 1 and 2 of the Code of Civil Procedure, *inter alia* praying that pending the final disposal of the suit their possession over the suit property should not be disturbed.

3. The petitioners on being served with the suit summons appeared in the matter and filed their written statement and reply to the application for grant of temporary injunction. The case of the petitioners is that on 13.04.2016 the respondents had entered into agreement of sale with respect to the suit property with petitioner no.1 *inter alia* agreeing to sell the suit property to petitioner no.1 for a consideration of Rs.28,00,000/-. It is stated that prior to the execution of the agreement of sale amount of Rs.18,00,000/- is paid in cash from time to time and on the date of agreement, petitioner

no.1 had paid a sum of Rs.6,00,000/- in cash to the respondents. As per the case of the petitioners a sum of Rs.4,00,000/- only was outstanding. The petitioners contend that under the agreement dated 13.04.2016 petitioner no.1 was placed in possession of the suit property.

4. The learned Trial Court vide order dated 20.07.2023 has rejected the application for grant of temporary injunction filed by the respondents. The learned Trial Court has placed reliance on the document purported to be agreement of sale dated 13.04.2016 as also on the affidavits of adjoining land owners while rejecting the application for grant of temporary injunction.

5. Aggrieved by order dated 20.07.2023, whereby the application for grant of temporary injunction came to be rejected, respondents preferred an appeal being Miscellaneous Civil Appeal No.62 of 2023. The said Appeal came to be allowed vide judgment and order dated 02.04.2024 passed by the learned District Judge -3, Jalgaon.

6. The learned Counsel for the petitioner states that *prima facie* documentary evidence is on record in the form of agreement of sale dated 13.04.2016 indicating possession of the petitioners over the suit property. He contends that apart from this, affidavits of six adjoining

land owners are filed to demonstrate possession of the petitioners over the suit property. He also contends that although, the sale consideration in terms of the agreement is paid in cash, affidavit of one of the witnesses in whose presence amount of Rs.18,00,000/- & Rs.6,00,000/- was paid is filed on record. He therefore contends that the Trial Court has rightly appreciated the aspect of *prima facie* case to hold that the petitioners are in possession of the suit property. The learned Counsel for the petitioner contends that since the suit is for perpetual injunction, the scope of inquiry is to find who is in possession of the property. The possession according to him has to be settled possession. He contends that even if possession is held to be illegal still the respondents cannot dispossess the petitioners without following due process of law. The learned Counsel has placed reliance on judgment of this Court in the matter of ***Baban Anantrao Naik Vs. Sau. Pramila Uttamrao Yenare and another reported in 2011 (6) All M.R.15*** in support of this contention. He contends that the learned Appellate Court has misdirected itself while appreciating and applying the provisions of the Maharashtra Stamp Act, 1958 and the Indian Registration Act, 1908. He contends that the deficiency of stamp duty could be made good during the course of evidence and that while deciding an application

for grant of temporary injunction an agreement which is not adequately stamped can also be looked into to determine *prima facie* case. As regards registration of the document, his contention is that although protection under Section 53 of the Transfer of Property Act may not be available for want of registration, an injunction not to disposes without following due process, can be granted under the provisions of the Specific Relief Act as also Order 39 Rules 1 and 2 by relying on unregistered agreement.

7. Per contra, the learned Counsel for the respondents contends that the agreement dated 13.04.2016 is *prima facie* unreliable. He has drawn attention to the plaint and the purported agreement to contend that respondent no.2 marks signatures on documents and despite this, her alleged thumb impression is appearing on the alleged agreement dated 13.04.2016. He further contends that perusal of the stamp papers on which the agreement is written will demonstrate that the stamp papers were purchased for some banking purpose and not for the purpose of execution of agreement. He further states that the parties are closely related to each other and that the petitioners had an eye on the property of the respondents and therefore with a view to grab property false agreement is created. He justifies the findings

recorded by the learned First Appellate Court contending that for the purpose of determining possession the entries in revenue record are relevant and admittedly revenue record is standing in the name of the respondents. He further contends that the case of the petitioners as regards payment of sale consideration of Rs.24,00,000/- in cash is completely unbelievable.

8. Having heard the rival submissions, I am of the considered opinion that the learned Counsel for the petitioners is right in his submission with respect to legal position that an agreement inadequately stamped can be looked into and considered at the stage of hearing of the application for grant of temporary injunction. Deficiency of stamp duty is a curable defect and the document could have been impounded during the course of evidence. I am also in agreement with the learned counsel for the petitioners that registration of an agreement of sale coupled with possession is not *per se* compulsory. Section 53(a) of the Transfer of Property Act, 1882 only provides that protection under the said provision can be claimed only if the agreement is registered. The effect of non registration of agreement will not be that a person in settled possession on the basis of agreement cannot seek injunction against

dispossession without following due process of law. Even if the agreement is unregistered a person in possession of immovable property can have recourse to provisions of Specific Relief Act as also the Civil Procedure Code for claiming perpetual and temporary injunction respectively.

9. As regards the facts of the case it is undisputed that the parties are closely related to each other. It appears from perusal of the plaint and the agreement that respondent no.2 has signed the plaint and the alleged agreement of sale purportedly bears her thumb impression. That apart, as rightly pointed out by the learned Advocate for the respondents the stamp papers on which the agreement is scribed mentions the purpose of purchase as 'for banking purpose'. Perusal of the agreement will demonstrate that as per the agreement sum of Rs.18,00,000/- was paid in cash to the respondents from time to time before the date of execution of the agreement. The particulars of these payments are not mentioned either in the agreement or in the written statement. The dates on which the payments are made and the amount that is allegedly paid on particular dates is also not mentioned, although an omnibus statement that sum of Rs.18,00,000/- was paid from time to time prior to the date of execution of the agreement is made.

10. It is further stated that on 13.04.2016 i.e. on the date of agreement a further amount of Rs.6,00,000/- was paid in cash. All these amounts are stated to be paid in presence of witnesses. Affidavit of one such witnesses, namely, Gokul Patil is also filed on record. However, his affidavit also did not disclose the material particulars as regards dates of payments and installments in which total amount of Rs.18,00,000/- is paid.

11. It is stated that the terms of sale were crystallized *inter alia* between the parties on 02.11.2015 and thereafter the agreement is executed on 13.04.2016. It is inconceivable that a person will start making payment of a huge amount of Rs.18,00,000/- without any written agreement.

12. The plaint and documents filed by the petitioners on record also do not indicate as to how huge amount of Rs.24,00,000/- was augmented by the petitioners in cash.

13. Having regard to the aforesaid *prima facie*, the case of the petitioners with respect to the alleged agreement which is the foundation of the case of the petitioners appears to be doubtful and not confidence inspiring.

14. The learned Counsel for the petitioner has also drawn attention to the fact that six adjoining land owners have filed affidavits stating that the petitioners are in cultivating possession of the suit property. Further, in my considered opinion, the entries in revenue record will have more value for determining *prima facie* case.

15. Having regard to the totality of circumstances, in my considered opinion, the learned First Appellate Court was justified in reversing the order of temporary injunction passed by the learned Trial Court. For the reasons mentioned above, I do not find any reason for interference in the order passed by the learned First Appellate Court.

16. Writ Petition is therefore, dismissed with no order as to costs.

17. It is clarified that the observations made in the judgment are *prima facie* observations for deciding the petition and that the suit for specific performance filed by the petitioners as also the present suit filed by the respondents shall be decided on their own merits without being influenced by this judgment.

[ROHIT W. JOSHI, J.]