



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

939 WRIT PETITION NO. 13160 OF 2024

1. Aavla Ghanshyam Bansode
Age 67 years, Occu. Agriculturist,
R/o Lokhandi Sawargaon,
Tq. Ambajogai, Dist. Beed
2. Pandurang s/o Ghanshyam Bansode
Age 61 years, Occu. Agriculturist,
R/o Lokhandi Sawargaon,
Tq. Ambajogai, Dist. Beed
3. Gavlan w/o Devidas Bansode
Age 61 years, Occu. Agriculturist,
Ro. Lokhandi Sawargaon,
Tq. Ambajogai, Dist. Beed
4. Sagar w/o Rajaram Jogdand
Age 81 years, Occu. Agriculturist,

VERSUS

1. Vasant s/o Sambhaji Bansode
Age 66 years, Occu. Agriculturist,
R/o Lokhandi Sawargaon,
Tq. Ambajogai, Dist. Beed.
2. Vijaya w/o Rajendra Bansode
Age 71 years, Occu. Agri. & Housewife,
R/o Lokhandi Sawargaon,
Tq. Ambajogai, Dist. Beed.
3. Kachru w/o Chimaji Bansode
Age 73 years, Occu. Agriculturist,
R/o Lokhandi Sawargaon,
Tq. Ambajogai, Dist. Beed.
4. Pandurang s/o Baburao Kamble
Age 66 years, Occu. Agriculturist,
R/o Lokhandi Sawargaon,
Tq. Ambajogai, Dist. Beed.

5. Gautam s/o Savlaram Bansode
Age 65 years, Occu. Agriculturist,
R/o Lokhandi Sawargaon,
Tq. Ambajogai, Dist. Beed.
 6. The State of Maharashtra
Through Collector, Beed.
 7. The Tahsildar,
Tahsil Office, Ambajogai.
Dist. Beed.
 8. The Dy. Superintendent,
Land Record, Ambajogai
Dist. Beed.
 9. The Circle Officer,
Circle Office, Lokhandi Sawargaon,
Tq. Ambajogai, Dist. Beed.
 10. The Talathi,
Talathi Sajja Lokhandi Sawargaon
Tq. Ambajogai, Dist. Beed
- ...Respondents

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Mr. Ashwin V. Hon, Advocate for petitioner nos.2 to 4

Mr. V. S. Badakh, AGP for Respondents/State

Mr. Uttam L. Telgaonkar & Mr. Nitin U. Telgaonkar, Advocate for
respondent nos.1 to 5

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CORAM : ROHIT W. JOSHI, J.

DATED : 11th JULY 2025

ORAL JUDGMENT :-

1. This petition takes exception to judgment and order dated 19.03.2024 passed by the learned District Judge-2, Ambajogai allowing Miscellaneous Civil Appeal No.43 of 2023, thereby quashing and setting aside order dated 23.11.2023 passed by the learned Civil Judge, Senior Division, Ambajogai on an application below 'Exhibit-5'

in Regular Civil Suit No.46 of 2023.

2. The petitioners are original plaintiffs. They have filed a suit for declaration of ownership and injunction restraining the respondents from disturbing their possession over the suit properties which comprise of various agricultural lands. The said suit is registered as Regular Civil Suit No.46 of 2023. In the said suit, the plaintiffs filed an application for grant of temporary injunction below “Exhibit-5”. The learned Trial Court had allowed the said application vide order dated 23.11.2023. Aggrieved by the said order, the respondents preferred appeal under Order XLIII Rule 1(r) of the Code of Civil Procedure being Miscellaneous Civil Application No.43 of 2023. The said appeal came to be allowed against which the petitioners/original plaintiffs have filed the present petition.

3. It is the case of the plaintiffs that the suit properties were initially owned by one Shamshunissa Begum. It is claimed that this Shamshunissa Begum had vide Gift Deed dated 24.02.1953 donated the suit properties to one Aavla Adinathrao Bansode. The plaintiffs claim to be decedents of this Aavla Adinathrao Bansode. Accordingly, they claim to be in possession of the suit properties as true and lawful owners.

4. As against this, the case of the defendants is that they are in possession of the suit properties since the time of their forefathers and the suit properties are their ancestral properties. The learned Trial Court has relied upon Gift Deed dated 24.02.1953, to hold that *prima facie* the plaintiffs are owners of the suit property. Trial Court has observed that the plaintiffs have filed revenue records of the corresponding year to show that the properties claimed to be their forefathers during the Nizam regime. The learned Trial Court has also made reference to the register in the 'Pakka Book' No.3 in the month of March 1950 as also 'Khasra Patrak' of the year 1954-1955.

5. On this basis, it is observed that the plaintiffs were *prima-facie* in possession of the suit property as owners and were entitled for temporary injunction.

6. As against this, the respondents contend that the Gift deed is not a genuine document. It is the contention of the respondents that Aavla Adinathrao Bansode, the donee had expired on 18.10.1947. The respondents have filed death certificate of Aavla Adinathrao Bansode to establish the said contention. The contention of the learned Advocate for the respondents is that since Aavla Adinathrao Bansode had expired wayback on 18.10.1947, there was no question

of acceptance of Gift Deed dated 24.02.1953. He further contends that the genuineness of the Gift Deed is under cloud. As regards the physical possession, the learned Advocate for the respondent has drawn attention to the fact that undisputedly the revenue record presently stands in the name of the respondents. He contends that the plaintiffs have initiated proceedings challenging entries in revenue records standing in the name of respondents. He contends that the appellate Court has recorded that the suit property was recorded in the names of respondents for more than 44 years. He contends that long standing entries in revenue record have a presumptive value. He also drawn attention to the finding by the learned First Appellate Court with respect to electricity meter on the Well in the suit property standing in the name of the respondents.

7. Perusal of order passed by the learned Trial Court and the judgment passed by the learned Appellate Court so also other documents on record will make it clear that the purported Gift Deed is executed after the demise of Aavla Adinathrao Bansode, who is the donee. Acceptance of the Gift Deed is therefore doubtful. As regards the physical possession, there is ample documentary evidence on record to suggest that *prima facie* the respondents are in physical

possession of the suit property. Admittedly, there are long standing entries in revenue records in favour of the respondents. These entries are challenged by the plaintiffs and litigation in that regard is on going. The learned first Appellate Court has also referred to electricity meter on the Well in the suit property standing in the name of the respondents.

8. Admittedly, as per the case set up by the plaintiffs they had left the village for a considerable period of time. This casts a doubt about physical possession of the plaintiffs over the suit fields. Likewise, the documents pertaining to the consolidation scheme also suggest possession of the respondents over the suit property.

9. The learned Trial Court has laid great emphasis on the Gift Deed dated 24.02.1953 and some old entries. The reference of revenue entries in the order of learned Trial Court is upto the year 1954-55. The material on record is not sufficient to overturn the order passed by the learned First Appellate Court. The learned First Appellate Court has not committed any jurisdictional error in allowing the appeal and the findings recorded cannot be said to be perverse. The parameters governing grant of temporary injunction are also rightly considered.

10. In that view of the matter, no case is made out for interference at the hands of this Court in exercise of its jurisdiction under Article 227 of the Constitution of India. The writ petition is therefore liable to be dismissed and is accordingly **dismissed** with no order as to costs.

[ROHIT W. JOSHI, J.]