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WP-15195-2023

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.15195 OF 2023
WITH
CIVIL APPLICATION NO.4322 OF 2024
WITH
CIVIL APPLICATION NO.6544 OF 2024
WITH
CIVIL APPLICATION NO.13810 OF 2024
IN
WRIT PETITION NO.15195 OF 2023
WITH
CONTEMPT PETITION NO.631 OF 2024
IN
CIVIL APPLICATION NO.4322 OF 2024

Dnyaneshwar Baburao Bawaskar

Age: 49 years, Occu. Agriculture,

R/o. Sukali, Tq. Muktainagar, Dist. Jalgaon

...PETITIONER

VERSUS

1. **Dhanu Baburao Bawaskar,**
Age: 60 years, Occu. Labour,
R/o. At Post Chapora, Tq. and Dist.
Burhanpur, Madhya Pradesh (MP)-450331.
2. **Gopal Baburao Bawaskar**
Age: 56 years, Occu. Labour,
R/o. At Post Chapora, Tq. and Dist.
Burhanpur, Madhya Pradesh (MP)-450331.
3. **Balu Baburao Bawaskar**
Age: 58 years, Occu: Labour

R/o. At Post Chapora, Tq. and Dist.
Burhanpur, Madhya Pradesh (MP)-450331.

4. **Sadashiv Baburao Bawaskar,**
Age: 67 years, Occu. Labour,
R/o. Near Datta Mandir, Central Bank
Colony, Pimprala, Jalgaon,
Taluka & Dist. Jalgaon.

...RESPONDENTS

Mr. Ajay D. Pawar, Advocate for the petitioner in WP/15195/2023.

Mr. A. R. Sayed, Advocate for the Respondent Nos. 1 to 4 in
WP/15195/2023 and Petitioner in CP/631/2024.

CORAM : **KISHORE C. SANT, J.**
RESERVED ON : **30th APRIL 2025.**
PRONOUNCED ON : **26th JUNE 2025.**

ORDER :-

1. Heard Mr. Pawar, the learned Advocate for the Petitioner; Mr. Sayed, the learned Advocate for the Respondent Nos. 1 to 4; finally, at the stage of admission, with the consent of the parties.

2. The original defendant has approached this Court challenging judgment and order passed by the learned District Judge-3, Bhusawal, dated 5th December 2023, in Misc. Civil Appeal No.22 of 2023. The

appeal of the respondents-original plaintiffs came to be allowed, thereby allowing Application Exh.6 in Regular Civil Suit No.4 of 2023, pending before the learned Civil Judge, Junior Division, Muktainagar, Dist. Jalgaon.

3. The facts, in short, are that the present petitioner and the respondents are real brothers. The respondents filed Regular Civil Suit No. 4 of 2023 against the present petitioner, praying for declaration that all the brothers have 1/5 share in the suit property and for separate possession. They further prayed for cancellation of the relinquishment deeds dated 13th October 2021, and 29th May 2020, executed by the respondents asserting that the same are not binding upon them. It is the case of the respondents that the suit lands are the ancestral joint family property. All the respondents were residing away from village. They were looking after the lands by coming to the village. The property was recorded in the names of all the brothers. The land was initially cultivated by all, however, the respondent No.4 and other respondents used to pay the petitioner for cultivation and used to take the crop share.

All the brothers have invested amounts for the development of the property. Since the petitioner was youngest brother who residing in the village, he was thus a man of confidence only. For the purpose of getting subsidy, etc., the lands were shown in the name of Respondent Nos. 1 to 3. The documents illegitimately benefited from the illiteracy of Respondent Nos. 1 to 3. The petitioner got executed the documents of relinquishment deed, pretending them to be applications for taking revenue entries. It was later on found that the name of Respondent No.3 was deleted from the 7/12 extract. Upon making an inquiry, it was revealed that the petitioner had got relinquishment deeds signed by the respondents. In the same way, another relinquishment deed was executed. The respondents got knowledge of these documents on 22nd June 2022. Thereafter, the respondent asked the petitioner to partition the land and subsequently filed the suit.

4. It is the case in the written statement of the petitioner that the respondents have executed relinquishment deeds in favour of the petitioner. The documents of relinquishment deed are duly executed in

the office of the Sub-registrar. The Tahsildar also granted permission to execute the relinquishment deeds by letter dated 6th November 2021. Both the relinquishment deeds are thus, valid. He opposed the suit and Exh.-6 Application.

5. The learned trial Judge rejected Exh.-6 Application by its order dated 6th May 2023, holding that the plaintiffs failed to prove a *prima facie* case, the balance of convenience, and irreparable loss. It was observed that the documents of the relinquishment deeds are duly executed after obtaining prior permission from the Tahsildar. The fact of relinquishment deeds is not denied. The denial is only about the knowledge of the nature of document. The mutation entries are also taken on the basis of relinquishment deeds. It is held that the petitioner is cultivating the land and that there is no challenge to the mutation entries and thus passed the order.

6. The learned District Judge, in an appeal, observed that the relinquishment deeds were without any consideration. The deeds

themselves are challenged by the plaintiffs. There is no recital or clause about delivery of possession. When there is a dispute about relinquishment deeds, there is a *prima facie* case in favour of the respondents. The Court relied on the affidavits of the owners of the adjacent lands. It is held that the petitioner has brought no material on record to show that he became an exclusive possessor of the suit land. The respondents have joint possession of the suit property alongwith petitioner and, therefore, the defendants cannot be restrained from interfering with the suit property till the decision of the suit. The learned District Judge thus allowed the appeal and subsequently allowed the application for temporary injunction.

7. Mr. Pawar, the learned Advocate appearing for the petitioner, vehemently submits that in view of aforesaid facts, since the relinquishment deeds are not denied, there is no question of denial of ownership of the petitioner. Prior permission was obtained from the Tahsildar by following due procedure. The permission was specifically sought for the relinquishment deeds. The learned trial Court had rightly

considered all these aspects and had passed a well-reasoned order. The learned District Judge erred in relying upon the affidavits of adjoining owners. When the registered documents are very much on record, there is no question of the District Judge relying upon affidavits of owners of adjoining lands. He thus prays for allowing the writ petition.

8. In supports of his submission, the learned Advocate for the petitioner relied upon the following judgments:

- (i) *Wander Ltd. And Anr. Vs. Antox India P Ltd.*¹;
- (ii) *Laxmikant V. Patel Vs. Chetanbhai Shah and Anr.*²;
- (iii) *Mohd. Mehtab Khan & Ors. Vs. Khushnuma Ibrahim Khan & Ors.*³;
- (iv) *Shyam Sel and Power Ltd. & Anr. Vs. Shyam Steel Industries Ltd.*⁴;

9. Mr. Sayed, the learned Advocate appearing for Respondents, vehemently opposed the petition. He submits that the petitioner used to cultivate the land on behalf of all the respondents. Since the respondents

1 1990 (Supp) SCC 727

2 (2002) 3 SCC 65

3 (2013) SCC 221

4 (2023) 1 SCC 634

happen to be illiterate persons, the petitioner took disadvantage and got the documents executed. So-called relinquishment deeds are an outcome of fraud in connivance with stamp vendor. The suit is for separate possession and not just for possession. The so-called permission was also obtained from Tahsildar by the petitioner only. The Tahsildar does not have any authority to grant such permission. He thus submits that the District Judge has rightly considered all these aspects and has passed the order. He relied on Section 43 of the Maharashtra Tenancy and Agricultural Land Act, and submits that the documents cannot be read into evidence. On the relinquishment deeds, there is no signature of the respondents on each page. He further submits that there was challenge to the mutation entries. However, the same was dismissed by the learned Sub-Divisional Officer, Bhusawal, and mutation entry No.2539 dated 12th December 2021 was confirmed. He thus prays for dismissal of the writ petition.

10. In the case of ***Wander Ltd. And Anr. Vs. Antox India P. Ltd.*** (supra), the Hon'ble Apex Court was dealing with the provisions of Trade and

Merchandise Marks Act, 1958, Order 39 Rule 1 and Order 43 of the Civil Procedure Code, 1908. It has laid down factors to be considered while using the discretion and also the scope for the appellate Court to interfere with the exercise of discretion of the court of first instance. It is held that, the discretion exercised by the first instance, in normal course, shall not be interfered with, unless the said discretion is found to be unreasonable or perverse.

11. In the case of ***Laxmikant V. Patel*** (supra), the Hon'ble Apex Court considered the grant of injunction. It is held that the plaintiff must prove a prima facie case. The other factors balance of convenience and that the plaintiff would suffer irreparable injury if the injunction is refused. It was the case of passing off action under the Trade and Merchandise Marks Act, 1958.

12. In the case of ***Mohd. Mehtab Khan*** (supra), it is reiterated that the interference by the Appellate Court is not permissible unless it is found that the discretion exercised by the trial Court is palpably incorrect or

untenable. If the view taken by the trial Court is a possible view, then such discretion shall not be interfered with. Paragraph No.20 of the said judgment reads as under:

“20. In a situation where the learned trial court on a consideration of the respective cases of the parties and the documents laid before it was of the view that the entitlement of the plaintiffs to an order of interim mandatory injunction was in serious doubt, the appellate court could not have interfered with the exercise of discretion by the learned trial Judge unless such exercise was found to be palpably incorrect or untenable. The reasons that weighed with the learned trial Judge, as already noticed, according to us, do not indicate that the view taken is not a possible view. The appellate court, therefore, should not have substituted its views in the matter merely on the ground that in its opinion the facts of the case call for a different conclusion. Such an exercise is not the correct parameter for exercise of jurisdiction while hearing an appeal against a discretionary order. While we must not be understood to have said that the appellate court was wrong in its conclusions what is sought to be emphasised is that as long as the view of the trial court was a possible view the appellate court should not have interfered with the same following the virtually settled principles of law in this regard as laid down by this Court in Wander Ltd. v. Antox India (P) Ltd..”

13. In the case of ***Shyam Sel and Power Limited and Anr.*** (supra), the Hon’ble Apex Court considered that, three tests are to be applied i.e. prima facie case, balance of convenience and irreparable injury. In the said case, while granting injunction, there was no discussion as to how the prima facie case was made out by the plaintiff. The other two aspects were not at all considered i.e. balance of convenience and

irreparable injury likely to be caused. In that view of the matter, the order passed by the learned Single Judge of this High Court was quashed and set aside with a request to decide the application for injunction afresh.

14. In the present case, it is seen that the injunction was granted by the trial Court, considering that the original defendant-present petitioner was cultivating the land. The learned Appellate Court held that the defendant cannot be restrained from interfering with the suit property till the decision of the suit and allowed the application for temporary injunction.

15. Looking to the factual aspect, it is a matter of record that the relinquishment deeds are executed by the plaintiffs in favour of defendant. The ownership of the defendant is thus not questioned or denied. The prior permission was also obtained from the Tahsildar by following due procedure before executing relinquishment deeds. This was considered by the trial Court while rejecting the application. The

learned Appellate Court mainly relied upon the affidavits of the adjoining owners. Those are considered and given even more weightage than the registered document.

16. The trial Court, in its order, specifically observed that affidavits cannot be considered in view of registered relinquishment deeds. Even the mutations entries are not challenged by the plaintiff, thus, it considered the prima facie case. The Court therefore did not find a prima facie case and balance of convenience in favour of the plaintiffs and consequently concluded that even the case of irreparable injury is also not made out.

17. As against this, the learned District Judge considered that the suit properties was joint family property of plaintiffs and defendant. All the parties were in joint possession over the suit property till relinquishment deed was executed. The Court, however, still considered that those relinquishment deeds to be without consideration and ignored the same. In paragraph No.14, the Appellate Court observed that the plaintiff had

established and proved the possession over the land. This observation is based on the affidavits of the adjoining owners, and on that basis, he came to conclusion that the land is still in joint possession.

18. Considering the judgments in the case of *Moh. Mehtab Khan and Shyam Sel and Power Limited and Anr.*, and the well-settled principles for granting injunctions, this Court finds that the learned District Judge has certainly committed an error by interfering with the order passed by the learned trial Judge. There is no conclusion recorded as to how the view taken by the trial Court is not possible, or is perverse or illegal. It was necessary for the Appellate Court to consider this aspect. This Court, therefore, finds force in the argument of learned Advocate for the petitioner that the learned District Judge erred in quashing and setting aside the well-reasoned order of the trial Court. Petition, therefore, deserves to be allowed. Hence, the following order:

ORDER

- (i) Writ Petition stands allowed in terms of prayer

clause (B).

(ii) In view of disposal of main writ petition, civil applications do not survive and the same also disposed off.

(ii) So far as Contempt Petition No.631 of 2024 is concerned, this Court finds that though it is brought to the notice that there was a violation of an interim order passed by this Court, however, now the main petition itself is disposed off. This Court finds that it would not be proper to go into this aspect of contempt. Contempt petition is also, therefore, disposed off.

[KISHORE C. SANT, J.]