



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9640 OF 2022

Pradip Suresh Harde

VERSUS

Yogesh Sheshrao Alias Shashikant Kundhare And Others

WITH

WRIT PETITION NO. 9641 OF 2022 WITH
CIVIL APPLICATION NO. 9368 OF 2023
IN WP/9641/2022

Pradip Suresh Harde

VERSUS

Yogesh Sheshrao Alias Shashikant Kundhare And Others

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Ms. P. V. Langhe h/f Mr. V. R. Langhe, Advocate for the
Petitioner

Mr. D. M. Wagh, Advocate for Respondent Nos. 1,2,4 And
5 in WP/9640/2022 & for Respondent Nos. 3,6 And 7 in
WP/9641/2022

CORAM : R. M. JOSHI, J

DATE : OCTOBER 06, 2025

COMMON ORDER :

1. By consent of both sides, heard finally at the
stage of admission.

2. These Petitions take exception to the order
dated 02.09.2022 passed in Misc. Civil Appeals Nos.
37/2022 and 38/2022 challenging orders passed below
Exh. 5 in RCS No. 768/2018 and 816/2019 respectively.

3. Parties are referred to as 'purchaser' and 'original owners' for the sake of convenience.

4. The facts, which led to the filing of these Petitions, can be narrated in brief as under:

a. On behalf of Original owners agreement to sale came to be executed on 31.08.2018 in respect of suit property and agreed to sale the same to the purchaser. Since the suit property is Class II land, permission of the appropriate Authority was required to be obtained for the purpose of sale thereof. Admittedly, after the execution of agreement to sale, permission has been obtained from Collector and registered sale deed came to be executed on 11.03.2019 in respect of suit property.

b. After execution of agreement to sale and before execution of sale deed, RCS No. 768/2018 came to be filed by one of the owners' of the suit property. It is claimed therein that the suit property does not require sale and as such, injunction was sought against third party in the suit property along with parties of the suit property.

c. Purchaser claims that pursuant to the sale deed, he received possession of the suit property and since obstruction was caused by the purchasers to his possession, RCS No. 816/2019 came to be filed for seeking injunction against original owners. The purchaser in his suit sought injunction restraining original owners from obstructing his possession in respect of suit property. On the other hand, no such injunction is sought in respect of possession by original owner and restricting order is sought about not to create third party interest on the suit property.

d. Learned Trial Court allowed Exh.5 filed by purchaser and rejected the interim relief application filed by the original owners. Against these orders, Misc. Civil Appeals Nos. 37/2022 and 38/2022 came to be filed. These Appeals were decided by common order dated 02.09.2022. The First Appellate Court caused interference in the orders passed by the Trial Court and reversed the same. Hence, these Petitions.

5. Learned Counsel for the Petitioner submits

that the District Court has failed to take into consideration the factum of execution of registered sale deed on 11.03.2019 with recitals of handing over of possession of the suit property to purchasers. It is further pointed out that the said sale deed was executed pursuant to the permission sought from the Collector in that regard by erstwhile owners. Grievance is made that the District Court has committed error in granting injunction against the purchaser from obstructing Plaintiff's possession over suit property without there being any such prayer made in the suit of the owners.

6. Learned Counsel for contesting Respondent supported the impugned order. According to him, there is a pleading in RCS No. 768/2018 taking exception to the sale deed so also claiming possession of the suit property.

7. There is no dispute about the fact that in RCS No. 768/2018, Plaintiff therein who is one of the owners has not sought any relief/injunction from the Court restraining purchaser from obstructing the possession in respect of suit properties. In spite of

this position, learned District Court has granted injunction. Though clause no. 3 of the impugned order does not specifically state about obstruction to the possession, however, observations made in paragraphs 43 and 44 indicate that the District Court intended to protect the possession of the original owner in respect of suit property. Moreover, the original owner/Respondent herein also claims the order to be injunction against interference in their possession over suit property. In the light of these facts, this Court finds substance in the contention of the learned Counsel for the Petitioner/Purchaser that relief granted by the District Court is in respect of possession of original owners and same is beyond pleadings and prayers, hence, not sustainable. Even if it is accepted that it is open for the Court to mould the relief but relief which is not claimed at all cannot be granted. Grant of relief which lead to miscarriage of justice as other side has no knowledge about such relief being prayed but it came to be granted in the final order. The purchaser in this case is denied opportunity of even being heard before grant of such relief.

8. Having regard to the aforestated facts, this Court is of the view that the learned District Court while passing impugned order in Misc. Civil Appeals has failed to take into consideration the pleadings of the parties, prayers and material placed on record. It was necessary for the said Court to consider the presumptions in respect of the registered sale deed, which was preceded by an agreement to sale and permission from competent authority. The Court also could not have issued written statements filed by defendants. As a result of which, the impugned order deserves to be set aside and accordingly, impugned order dated 02.09.2022 passed in Misc. Civil Appeals Nos. 37/2022 and 38/2022 is set aside.

9. Since there was no prayer by owners seeking protection of their possession, it is not open for this Court in these Petitions to record any findings even *prima facie* with regard to the possession of the parties, if any. Hence, Misc. Civil Appeals No. 37/2022 and 38/2022 are relegated back to the learned District Court for decision afresh. Needless to say that with setting aside of the impugned orders, the orders passed

by the Trial Court below Exh. 5 stand restored.

10. Petitions stand allowed in above terms.

11. Pending civil application, if any, stands disposed of.

(R. M. JOSHI, J.)