



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL WRIT PETITION NO. 12612 OF 2021

Machindra S/o Ramkisan Kale & Anr ...Petitioners

Versus

Shesherao S/o Deu Todekar & Ors ...Respondents

- Mr. H. V. Tungar, Advocate for the Petitioners
- Mr. R. P. Dhase, Advocate for the Respondents

CORAM : R. M. JOSHI, J
RESERVED ON : OCTOBER 15, 2025
PRONOUNCED ON : OCTOBER 17, 2025

ORDER :

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

2. This Petition takes exception to the order dated 01.03.2021 passed by the District Judge – 2, Beed in Misc. Civil Appeal No. 25/2018 whereby the order passed below Exh. 5 in RCS No. 314/2016 came to be set aside and Exh. 5 is rejected. The Appellate Court by the said order directed expeditious disposal of the suit.

3. Petitioners are Original Plaintiffs who filed suit for declaration that they are owners of suit properties and Defendants shall not obstruct their

possession over the same. Plaintiffs claim that they are the owners of joint family properties described as suit properties bearing Survey Nos. 190 and 192 and which has not been partitioned. It is averred that when the Plaintiffs attempted to measure the land through surveyor, on 03.07.2015 Defendant Nos. 1 to 3 and their relatives obstructed the said measurement and caused assault on the Plaintiffs and their family members. It is also stated therein that it was revealed to the Plaintiffs that Defendant No. 5, without there being no concern with Survey Nos. 190 or 192, executed sale deed in favour of Defendant No. 4 and Plaintiff No. 1 on 20.06.1978. Plaintiff No. 1 claims that he had no knowledge about the said sale deed in his favour. With these submissions, Exh. 5 came to be filed seeking injunction against Defendants.

4. Defendants filed written statement resisting the contention of the Plaintiffs claiming that 50% share was received by Ramkisan Kale i.e., father of Plaintiffs and Gangaram Kale. It is claimed that Gangaram Kale sold his share to Defendant No. 5 by executing registered sale deed on 23.05.1977. It is

specifically averred that though there was no written partition, partition was effected between Ramkisan Kale and Gangaram Kale and they were cultivating their respective portions of lands. It is claimed that Defendants are in possession and cultivating the lands purchased by them.

5. Learned Trial Court allowed Exh. 5 by order dated 28.02.2018 restraining Defendant Nos. 1 to 4 from causing obstruction of the peaceful possession of Plaintiffs over the suit property. While granting injunction, it is observed that in support of the contentions of the Plaintiffs, they have filed copies of 8-A and 7/12 extract of suit land indicating their names appearing in the record of right. On the basis of said revenue record, order injunction came to be issued. Defendant Nos. 1 to 4, being aggrieved by the said order, preferred Misc. Civil Appeal No. 25/2018. This appeal came to be allowed by impugned order and application Exh. 5 was rejected. Hence, this Petition.

6. Learned Counsel for the Petitioners/Plaintiffs submits that as per the recitals of the sale deed the suit properties were undivided joint family properties

and as such, neither Defendant No. 5 nor other Defendants can claim possession over the suit properties. To support this submission, he placed reliance on the judgment of Hon'ble Supreme Court in case of *M.V.S. Manikayala Rao vs. M. Narasimhaswami and Others, AIR 1966 SC 470*. It is further submitted that in absence of disclosure of the boundaries in respect of they are in possession, it would be justified that they are enjoined from causing interference in the possession of the Plaintiffs over suit property. According to him, reflection of name in 7/12 extract on the basis of registered sale deed in view of Section 149 of Maharashtra Land Revenue Code, is not sufficient to hold possession of Defendant Nos. 1 to 4 over suit properties or any portion thereof.

7. Learned Counsel for the Respondents/Original Defendant Nos. 1 to 4 supported the impugned order. According to him, sale of undivided share is permitted and as such, no fault can be found with the execution of the sale deeds. In so far as possession of the portion of the properties purchased by Defendant Nos. 1 to 4 is concerned, it is contended that a specific case

is made by Defendants about there being partition between Ramkisan Kale and Gangaram Kale and they are cultivating their respective independent portion of the suit properties. It is submitted that it is practically impossible to accept that the transaction of sale is effected in the year 1978 and that the purchaser which includes Plaintiff No. 1 too is not put in the possession of the suit properties without he making any grievance. It is submitted that in view of the fact that the Defendant No. 5 had sold the property purchased by him not only to Defendant No. 4 but also to Plaintiff No. 1 indicates that the transaction of sale was within his knowledge and also that the parties were put into independent possession of the portion purchased. To support his submissions that the Defendant Nos. 1 to 4 are in possession of suit properties and cultivating the same, reference is made to 7/12 extract. This contention is opposed by learned Counsel for the Petitioners by submitting that 7/12 extract would only reveal the ownership and not the possession of these Defendants.

8. For the purpose of deciding the interim relief

application, the Court has to see *prima facie* case made out and balance of convenience. Here in this case, though it is sought to be contended on behalf of Plaintiffs that Survey Nos. 190 and 192 were never partitioned, the *prima facie* material placed on record indicates that the two sharers i.e., Ramkisan Kale and Gangaram Kale and/or their successors are shown to be independently in possession of portion of the lands specified in 7/12 extract. If there was no such partition, there would arise no reason to show separate shares of concerned. Moreover, 7/12 extract also indicates the names of Defendant Nos. 1 to 4 being shown as owners and cultivation of their portion is shown to be by 'Khud' i.e., Self.

9. Most importantly, it is relevant to note that Plaintiff No. 1 himself had purchased the portion of the suit property from Defendant No. 5 by sale deed dated 20.06.1978. Though now it is sought to be claimed by Plaintiff No. 1 that he had no knowledge about the same, *prima facie* his said contention does not deserve acceptance. Record indicates that since long time i.e., after execution of sale deed revenue record reflects

the said transaction. Thus, *prima facie* it could be safely said that case sought to be made by Plaintiff No. 1 is an afterthought.

10. Apart from this, this Court finds substance in the contention of learned Counsel for Respondents that it is practically impossible that agricultural land, which is purchased in the year 1978 and that they are not put into the actual possession thereof. This fact coupled with the revenue record indicates that cultivation of the respective portion of the lands by Defendants supports their claim that in fact there was earlier partition between Ramkisan Kale and Gangaram Kale. There seems case sought to be made out that Plaintiffs are the sons of Ramkisan Kale and once it is admitted that Ramkisan Kale and Gangaram Kale had 50% share, they had no right to claim their independent share went to Gangaram Kale. As observed above, *prima facie* there appears partition between the co-sharers on the basis of revenue record.

11. In so far as judgment relied upon by learned Counsel for Petitioners is concerned, though the position of law, as laid down therein, cannot be

disputed, however, in the facts of the case, the said judgment would have no application. The observations of the District Court in Misc. Civil Appeal No. 25/2018 of the possession of the Defendants over the portion of the suit properties appears to be *prima facie* correct. In such circumstances, this Court finds no reason or justification to cause interference in the said order.

12. Apart from the fact that no case is made out by the Petitioners in causing interference in the said order, the said order of vacating the interim relief granted by the Trial Court is in force for last 4 years.

13. The District Court has already directed expeditious disposal of the trial and hence, direction to the Trial Court to decide the suit within stipulated period will meet ends of justice. Hence, Petition stands dismissed.

14. RCS No. 314/2016 stands expediated. Trial Court to decide the same as expeditiously as possible and in any case, within a period of a year from today.

(R. M. JOSHI, J.)