



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10410 OF 2024

Ramesh Rushindhar Bhalekar and Others ... Petitioners

Versus

Vachhalabai Parmeshwar Bhalekar and Others ... Respondents

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- Mr. Sanket Kulkarni, Advocate h/f. Mr. Suvidh S. Kulkarni,
Advocate for the Petitioners
- Mrs. Charuta S. Deshmukh, Advocate for Respondent Nos. 1 to 8

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CORAM : ROHIT W. JOSHI, J.

DATE : 10th JUNE, 2025

ORDER :

1. The petitioners are original plaintiffs. It is the case of the petitioners that the suit property was allotted to their father Late Rushindhar Bhalekar by his paternal uncle Late Kashinath, vide unregistered document titled as 'affidavit' dated 22.01.1982. The petitioners claim to be in possession of the suit property, which is an agricultural land admeasuring 0.36 HR on the basis of the said document. The contention of the petitioners is that the respondents were trying to disturb their possession over the suit property. The plaintiffs, therefore, filed a suit being Regular Civil Suit No. 305 of 2023 seeking declaration of ownership and settled possession over the suit property and an injunction restraining the defendants from disturbing their possession over the same.

2. In this suit, petitioners filed an application for grant of temporary injunction, which was allowed by the learned Trial Court vide order dated 21.02.2024. Aggrieved by the said order, allowing the application for grant of temporary injunction, the respondents preferred an appeal being Miscellaneous Civil Appeal No. 12 of 2022. The learned Appellate Court has allowed the said appeal vide judgment and order dated 30.07.2024. The petitioners, have therefore, filed the present application challenging the appellate judgment and order dated 30.07.2024.

3. The contention of the learned counsel for the petitioners is that the veracity of the document dated 22.01.1982 is not questioned by the respondents in their written statement inasmuch as they do not contend that the document does not bear the signature of Kashinath or that the alleged signature of Kashinath on the said document is forged. He contends that the learned Trial Court has rightly granted the order of temporary injunction placing reliance on the said document.

4. Placing reliance on the judgment of Hon'ble Apex Court in the matter of **Wander Ltd. and Another Vs. Antox India P. Ltd.** reported in **1990 (Supp) SCC 727**, learned advocate contends that appeal under Section 94 read with Order 41, Rule 1 of the Civil Procedure Code, 1908 is not an appeal on facts. It is a conceptual appeal

in which the learned Appellate Court cannot substitute its discretion for the discretion exercised by the Trial Court. His contention is that scope of the appeal is to examine as to whether the requisite parameters for grant of temporary injunction are properly appreciated and applied by the Trial Court. He contends that the learned Appellate Court has dealt with the appeal, as if it was dealing with a first appeal.

5. Per contra, the learned advocate for the respondents contends that the learned Trial Court has completely misapplied itself in granting injunction solely based on the alleged document dated 22.01.1982. She contends that the said document has come all of a sudden out of the blue inasmuch as if the document was indeed executed by Kashinath in favour of father of petitioners, the petitioners would have taken steps for effecting mutation of their names on the basis of the said document. She contends that the names of respondents are mutated in the revenue record which will *prima facie* indicate that the respondents are in possession of the suit property. She further argues that the presumption in favour of revenue entries and that too long standing revenue entries is not dislodged by the petitioners.

6. The learned advocate for the petitioners counters that revenue record entries are merely for fiscal purposes and not substantive evidence to determine ownership or possession over immovable property.

7. Heard the respective submissions as aforesaid and perused the record of the case with the assistance of the learned advocates. Perusal of the order passed by the learned Trial Court will demonstrate that the learned Trial Court has passed order of temporary injunction placing reliance on the alleged document dated 22.01.1982. The learned Trial Court has not considered other documents on record and particularly the revenue record which demonstrates continuous possession of the defendant over the suit property. As against this, the learned Appellate Court has considered the matter in great detail. The learned Appellate Court is right in placing reliance on revenue record for the purpose of determining *prima facie* case and based on the revenue record it has rightly recorded a *prima facie* finding that the defendants/respondents are in possession of the suit property. The findings recorded by the learned Appellate Court cannot be termed to be perverse by any stretch of imagination. Rather the findings are arrived at a *prima facie* assessment of the relevant material on record.

8. As regards the judgment of the Hon'ble Supreme Court in the matter of ***Wander Ltd. and Another (Supra)*** it needs to be stated that the general principles laid down in the said judgment cannot be disputed and the ratio of the judgment is binding. There cannot be two opinions about the said ratio. However, at the same time, it needs to be

remembered that findings on *prima facie* case are required to be recorded on due consideration of entire material on record. It needs to be stated that the learned Trial Court has considered only one document and has decided the application for grant of temporary injunction on the basis of the said document completely ignoring long standing entries in the revenue record in favour of the defendants.

9. As has been held in the matter of ***Sahibdar Khan and Ors. Vs. Sadloo Khan (Dead) by Lrs. and Ors.*** reported in ***(2001) 10 SCC 464*** and many other decisions long standing entries in revenue record have a presumption of correctness at least on the point of possession.

10. Having regard to the aforesaid in my considered opinion, the learned Appellate Court has not committed any error warranting interference at the hands of this Court either in exercise of its writ jurisdiction under Article 226 or supervisory jurisdiction under Article 227 of the Constitution of India.

11. Consequently, the petition is dismissed with no order as to costs.

[ROHIT W. JOSHI]
JUDGE