



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

902 WRIT PETITION NO. 10920 OF 2024

1. Rajendra Trimbak Sirsat
Age : 48 years, Occ : Agriculture,
2. Balu @ Balasaheb Trimbak Sirsat
Age : 44 years, Occ : Agriculture,
3. Parmeshwar Trimbak Sirsat
Age : 36 years, Occ : Agriculture,
4. Rama Mahadeo Sirsat
Age : 45 years, Occ : Agriculture,
5. Dadarao Mahadeo Sirsat
Age : 38 years, Occ : Agriculture,
6. Chandrabhan Dada Sirsat
Age : 73 years, Occ : Agriculture,

All R/o Gadhi, Taluka Georai,
Dist. Beed.

..PETITIONERS

-VERSUS-

1. State of Maharashtra
Through Collector, Beed.
2. Zilla Parishad,
Through Chief Executive Officer,
Beed.
3. Education Officer (Shikshan Adhikari),
Zilla Parishad Office, Beed.
4. Headmaster, Zilla Parishad Primary School,
Gadhi, Taluka Georai, District Beed.
5. Executive Engineer,
Samagra Shiksha Zilla Parishad, Beed.

6. Deputy Engineer, Zilla Parishad,
Construction Sub-Division Office,
Georai, Dist. Beed.
7. Grampanchayat Gadhi
Through its Sarpanch Grampanchayat Office,
Gadhi, Taluka Georai, Dist. Beed.
8. Balajai Rambhau Jadhav
Age : 40 years, Occ : Contractor,
R/o Kekatpangir, Taluka Georai,
Dist. Beed.

..RESPONDENTS

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Advocate for the Petitioners : Adv. Jadhav Aummaheshwari S.
Addl. GP for Respondent/State : Dr. Kalpalata Patil Bharaswadkar
Advocate for Respondent Nos.2 and 4 : Mr. Suryawanshi Prashant D.
Advocate for respondent no.8 : Mr. Sharad S. Shinde h/f Mr. S.A.
Nagorsoge

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CORAM : ROHIT W. JOSHI, J.

DATED : 12th June, 2025

ORAL JUDGMENT :

1. The petitioners in the present petition are original plaintiffs. Respondents are original defendants. The parties will be referred as “plaintiffs” and “defendants” in the body of the judgment.

2. Plaintiffs have filed suit, being Regular Civil Suit No.77/2024, for recovery of possession of the suit property bearing Gut No.666 admeasuring around 0.23 HR situated in village Gadhi, Tq.Georai, Dist. Beed. Defendant no.2 is running a primary school in the building standing on the suit property. The said building, according to the defendants, is in dilapidated condition, and therefore, the

defendants intend to construct a new school building in the said suit property. In such circumstances, the plaintiffs have filed suit for declaration of ownership and recovery of possession, being Regular Civil Suit No.77/2024. In the said suit, the plaintiffs have also sought relief of temporary injunction restraining the defendants from making construction over the suit property.

3. The defence of the defendants is that the suit property was owned by predecessors of the plaintiffs and that they had dedicated the suit property for school and public road. It is stated that this dedication was somewhere around the year 1955-56. It is contended that the defendants have become the owners of the suit property by adverse possession in the light of long standing possession.

4. The application for grant of temporary injunction is rejected by the learned Trial Court vide order dated 10.06.2024. Aggrieved by the rejection of the said application, the plaintiffs filed an appeal under Section 104 read with Order XLIII Rule 1(r) of the Code of Civil Procedure, being Misc. Civil Appeal No.35/2024. The said appeal is dismissed vide judgment and order dated 04.09.2024 passed by the learned District Judge-1, Beed. The present petition is filed assailing the aforesaid two orders.

5. The learned counsel for the petitioners contends that school is being run since the year 1993-94. According to her, the property was given in occupation of defendant no.2 – Zilla Parishad and the Zilla Parishad is occupying the same as permissive occupant. She contends that perusal of the pleadings in the written statement will indicate that even if the entire case as is set up in the written statement is accepted, the essential ingredients of adverse possession are not made out. She further elaborates that since defence of adverse possession is taken up, it is obvious that the plaintiffs' ownership is admitted. She, therefore, contends that the learned Courts ought to have allowed the application for grant of temporary injunction. It is her submission that the nature of the suit property should not be allowed to be altered without the consent of the plaintiffs, who are owners of the suit property.

6. Per-contra, the learned AGP and learned advocate for the defendant – Zilla Parishad justify the orders. They contend that the possession of the suit property is with the Zilla Parishad since the year 1955-56. The possession is open possession and the property is being enjoyed as if the Zilla Parishad is owner of the property. It is therefore contended that prima facie, the plaintiffs can not be said to be owners of the said property. Apart from this, it is contended that in the event the plaintiffs succeed in the suit, the decree for possession will ensue,

and therefore, no prejudice will be caused to the plaintiffs, if the order is maintained. It is further contended that the building in which the school is run is in a dilapidated condition necessitating the construction of new building. It is contended that the construction has already commenced and has come upto plinth level.

7. Having heard the rival submissions and having perused the record of the case, particularly the written statement, it appears that the case of the defendants is that they were placed in possession of the suit property by predecessors of the plaintiffs. The said pleadings will indicate that possession is permissive. In what manner, the possession has become adverse is not pleaded in the written statement. Likewise, the date from which the possession has become adverse is not mentioned. It should also be mentioned that since plea of adverse possession is taken, it is obvious that ownership of the plaintiffs will have to be admitted by the defendants. In any case, the defendants have admitted ownership of predecessors of the plaintiffs over the suit property.

8. The learned counsel for the plaintiffs has drawn attention to the judgment dated 8th January, 2020 of the Hon'ble Supreme Court in the matter of ***Vidya Devi Vs. State of Himachal Pradesh and others in Civil Appeal Nos.60/2020 and 61/2020.*** In the said matter, the land

owned by the appellant was taken by the State for construction of a road. However, compensation was not paid to her. The construction of the road was completed in the year 1975. Thereafter, a petition seeking compensation was filed by the owner in the year 2004. In this backdrop, the respondent-State had taken up plea of adverse possession against the land owner. Rejecting the contentions, the Hon'ble Supreme Court has held as under :-

“10.6. We are surprised by the plea taken by the State before the High Court, that since it has been in continuous possession of the land for over 42 years, it would tantamount to “adverse” possession. The State being a welfare State, cannot be permitted to take the plea of adverse possession, which allows a trespasser i.e. a person guilty of a tort, or even a crime, to gain legal title over such property for over 12 years. The State cannot be permitted to perfect its title over the land by invoking the doctrine of adverse possession to grab the property of its own citizens, as has been done in the present case.”

. It thus appears that the plea which is sought to be raised by the defendants is not legally permissible to be raised by them.

9. Having regard to the aforesaid, it has to be said that a very strong prima facie case is made out by the plaintiffs.

10. The learned counsel for the plaintiffs submits that it is settled legal position that while the suit in respect to immovable property is pending, the status-quo with respect to suit property should generally be preserved. She states that there is another Z.P. school within a distance of 1 kms where the students can be accommodated.

11. In the facts of the present case, it needs to be mentioned that the plaintiffs have made out excellent prima facie case and likely to succeed in the suit. In the event, the suit is decreed, public money to be expended on construction activity will go waste. It will not be in the interest of defendants also to incur expenditure over the property on which prima facie they do not have any right. Since the construction is sought to be made over property which is prima facie owned by the plaintiffs against their wish point of balance of convenience is required to be answered in their favour. Likewise, since the dispute pertains to immovable property and the plaintiffs are prima facie owners of the suit property, it will be expedient that status-quo with respect to the construction activity be maintained. In that view of the matter, the impugned orders, are required to be quashed.

12. Hence, the following order:-

ORDER

- (i) Writ Petition is allowed.
- (ii) The order dated 10.06.2024 passed by the learned 2nd Joint Civil

Judge, Senior Division, Beed in Regular Civil Suit No.77/2024 on application at Exhibit-5 and judgment and order dated 04.09.2024 passed by the learned District Judge-1, Beed in Misc. Civil Appeal No.35/2024 are quashed and set aside.

(iii) Application at Exhibit-5 filed by the plaintiffs in Regular Civil Suit No.77/2024 pending on the file of the learned 2nd Joint Civil Judge, Senior Division, Beed is allowed.

(iv) Parties to bear their own costs.

[ROHIT W. JOSHI]
JUDGE

sga/