

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13588 OF 2023

1. Ganesh @ Vijay Bansi Patil
Age: 72 Yrs., Occu: Agri.
2. Vilas Bansi Patil
Age: 68 Yrs., Occu: Agri.
3. Vishvanath Bansi Patil
Age: 65 Yrs., Occu: Agri.

All R/o. Gandhi Chouk,
Shahada, Tal: Shahada, Dist : Nandurbar ..Petitioners

VERSUS

1. Vishvajit Bansi Patil
Age: 55 Yrs., Occu: Agri.
2. Sukanya W/o. Vishvajit Patil
Age: 52 Yrs., Occu: Agri.

Both R/o. Gandhi Chouk, Shahada,
Tal: Shahada, Dist: Nandurbar ..Respondents

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Advocate for Petitioners : Mr. P.N. Jain
Advocate for Respondent Nos.1 & 2 : Mr. S.P. Shah

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : JUNE 23, 2025

PRONOUNCED ON : JULY 15, 2025

JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally by consent of parties.
2. The petitioners / original plaintiffs impugn order dated 30.09.2023 passed by learned District Judge Shahada, in Misc. Civil Appeal No.13 of 2023, upholding order dated 18.08.2023 passed by

learned Civil Judge, Senior Division, Shahada below Exhibit-5, in Regular Civil Suit No.09 of 2023, thereby rejecting application seeking temporary injunction against defendants.

3. The petitioners instituted R.C.S. No.09 of 2023 seeking relief of declaration of ownership and perpetual injunction against respondents and others. It is contention of plaintiffs that land gat no.112 and 185 admeasuring 1H 30R situated at Shahada, District Nandurbar was possessed by Bansi Badhu Patil as a protected tenant. Whereas, an educational trust namely Leva Patidar Boarding was original owner. On death of Bansi Badhu Patil, name of plaintiffs and defendants was recorded as his legal heirs. Accordingly, each of plaintiffs and defendants have 1/8th share in suit property. According to plaintiffs, defendant no.1 got executed false, bogus and forged relinquishment deed dated 08.12.2004. Eventually, mutation entry no.1305 was certified. Later on, defendant no.1 entered into compromise with educational trust and got transfer of land in his name. Defendant no.1, in order to deprive the rights of plaintiffs, partitioned the property between himself and his wife i.e. defendant no.11 and changed the nature of property for alienation. Hence, suit is filed for reliefs claimed. Defendants filed written statement, denied plaintiffs case and asserted exclusive ownership and possession over the suit property.

4. The Trial Court after considering rival submissions rejected T. I. application filed by plaintiffs below Exhibit-5 vide order dated 18.08.2023. The plaintiffs challenged said order in Misc. Civil Appeal No.13 of 2022. However, learned District Judge, Shahada dismissed appeal vide his order dated 30.09.2023.

5. Mr. Jain, learned advocate appearing for petitioners submits that revenue record clearly depicts entry in name of Bansi Badhu Patil as protected tenant on suit land under Section 3(A) of the Bombay Tenancy and Agricultural Lands Act, 1948 ('BTAL Act' for short). Upon death of Bansi Badhu Patil, name of all legal heirs was mutated in record of rights vide M.E. No.1015 dated 01.12.2004. Mr. Jain would further submit that alleged relinquishment deed relied upon by defendants is an unregistered document and contents of same are specifically denied by plaintiffs. The mutation entry no.1305 dated 10.04.2005, which is certified based on such relinquishment deed would not confer right in favour of defendant no.1. Mr. Jain would further invite attention of this Court to order dated 01.08.2023 passed in Writ Petition No.5479 of 2023 and submit that in earlier round of litigation, this Court had issued directions to Trial Court to decide application Exhibit-5 afresh by taking into consideration additional documents pertaining to Inquiry Application No.17 of 2019, which has bearing on controversy in issue, but without

considering impact of additional documents, impugned orders are passed.

6. Mr. Jain supports his contentions relying on observations of Supreme Court in case of **Ramakant Ambalal Choksi Vs. Harish Ambalal Choksi** reported in **MANU/SC/1270/2024** to contend that notwithstanding the Rule of *lis pendens* in Section 52 of the T.P. Act, there can be occasion for the grant of injunction restraining *pendente lite* transfers in a fit and proper case. Mr. Jain further relies on judgments of Hon'ble Supreme Court in case of **Kalpraj Dharamshi Vs. Kotak Investment Advisors Limited** reported in **MANU/SC/0174/2021** and **Premlata @ Sunita Vs. Naseeb Bee** reported in **AIR (SC) 2022 1560** and **Maharwal Khewaji Trust (Regd), Faridkot Vs. Baldev Das** reported in **AIR (SC) 2005 104**. Mr. Jain endeavours to point out that now defendant no.1 is creating third party interest in suit property and for that purpose relied upon a copy of index of registered document no.5115 of 2024 dated 30.10.2023.

7. Per contra, Mr. Subodh Shah, learned advocate appearing for respondents would submit that present suit is instituted in the year 2023. In first round of litigation, both Courts had decided against petitioners and refused to grant temporary injunction. Even after remand of matter, both Courts have concurrently held that plaintiffs failed to prove *prima facie* case and bring on record other parameters essential for grant of temporary injunction. Mr. Shah

would further submit that petitioners' claim is based on contention that Bansi Badhu Patil was protected tenant on suit land. However, orders passed by revenue authorities clearly depicts that such tenancy rights never exist, eventually trust had obtained certificate under Section 88(b) of BTAL Act. Later on, trust obtained permission from Charity Commissioner and compromised with defendant no.1 who was in exclusive possession of suit property. Eventually, as per order passed by Joint Charity Commissioner, Nashik, in Inquiry Application No.17 of 2019, suit land is transferred in name of defendant no.1 vide registered transfer deed. He would submit that undisputedly defendant no.1 is in possession of suit property. Mr. Shah would further urge that in year 2004, plaintiffs relinquished their rights in favour of defendant no.1. Since then, name of defendant no.1 was exclusively shown as possessor over suit land. Now, plaintiffs are asserting their right over suit property without any basis.

8. Having considered submissions advanced by learned advocates appearing for respective parties and after going through the reasons recorded in impugned order, it can be observed that the thrust of plaintiffs' claim is based on alleged tenancy rights of their father i.e. Bansi Badhu Patil over suit property. Admittedly, Leva Patidar Boarding Trust is owner of land. Although initial mutation entry shows existence of tenancy right of plaintiffs' father, later on, competent tenancy authority declared him unconcern with suit

property, consequently certificate under Section 88(B) of BTAL Act, 1948 is issued. The entry of termination of tenancy is taken in record of rights. Therefore, although Banshi Badhu Patil possessor, upon his death, defendant no.1 continued his unlawful possession. On *prima facie* consideration of material on record, both Courts found that order in Tenancy Application No.01 of 2016 has attained finality. The tenancy rights, if any, were extinguished by order of competent authority, which led to issuance of certificate under Section 88(B) of BTAL Act, 1948. Eventually, the whole basis of plaintiffs' claim that Banshi Badhu Patil was a protected tenant and they are entitled to inherit tenancy, does not stand to scrutiny. The Trial Court has further observed that mutation entry no.1275 dated 20.02.1962 also depicts that tenancy rights of Banshi Badhu Patil were already terminated by revenue authority.

9. Perusal of order passed by Appellate Court in Misc. Civil Appeal No.13 of 2023 would suggest that there is elaborate consideration of additional documents relied by petitioners, in respect of Inquiry No.17 of 2019 before Joint Charity Commissioner, Nashik. It was an application submitted by trust under Section 36(1)(a) of Maharashtra Public Trust Act, 1950 seeking permission to sell/exchange trust property. It is true that in an affidavit submitted by defendant no.1 before Joint Charity Commissioner, there is statement that legal heirs of Banshi Badhu Patil have relinquished their

share from suit property and he being legal heir of Bansi Badhu Patil compromised the case with trust. However, only on the basis of such statement, particularly in light of relinquishment deed dated 08.12.2004 and consequential mutation entry no.1305 certified on 10.04.2005, plaintiffs cannot assert right over suit property.

The issue whether unregistered relinquishment deed dated 08.12.2004 is admissible in evidence or whether the contents of such relinquishment deed can be treated as estoppel against plaintiffs are the questions to be determined at trial. However, on *prima facie* consideration of material on record, in wake of trust transferring suit property in favour of defendant no.1 as per permission from competent authority, the Trial Court as well as Appellate Court rightly concluded that plaintiffs *prima facie* failed to establish their right over suit property.

10. Once court of first instance exercises its discretion to grant or refuse relief of temporary injunction and said exercise of discretion is based upon *prima facie* consideration of material placed before the Court supported with cogent reasons, the Appellate Court will loath to interfere simply because on *de novo* consideration of matter, it is possible for Appellate Court to form its opinion on the issue of *prima facie* case, on balance of convenience, irreparable injury and equity. The reference can be given to the ratio laid down by the Hon'ble Supreme Court in the case of **Skyline Education**

Institute (India) Pvt. Ltd Vs. S.L. Vaswani reported in **(2010) 2 SCC**

142. In light of aforesaid exposition of law and fact that foundation of plaintiffs' case itself is shaken in light of orders passed by competent authority under Bombay Tenancy and Agricultural Lands Act, it is difficult to hold that plaintiffs fulfill requirement for grant of temporary injunction.

11. It is trite law that Writ Court can interfere in the order passed by the Trial Court or Appellate Court only when there is jurisdictional error, non-application of mind or perversity in findings. This Court finds that Courts below have dealt with all relevant aspects of matter and appropriately applied relevant provisions of law to the facts of case. In that view of matter, no case is made out to cause interference in writ jurisdiction under Article 227 of Constitution of India.

12. In result, writ petition stands rejected.

13. Rule discharged.

(S.G. CHAPALGAONKAR, J.)