

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1063 OF 2020

Nandadevi Ravindra Nemishte
Age: 54 Yrs., Occ: Household and
Agriculture, Resident of Kodoli
Tal: Panahala, Dist: Kolhapur

... Petitioner

V/s.

1. Babaso Kerba Chavan
Age: 33 Yrs., Occ: Agriculture
Residing at Male, Tal: Panhala
Dist: Kolhapur

2. Nandkumar Kerba Chavan
Age: 31 Yrs., Occ: Agriculture
Residing at Male, Tal: Panhala
Dist: Kolhapur

3. Vijaykumar Kerba Chavan
Age: 28 Yrs., Occ: Agriculture
Residing at Male, Tal: Panhala
Dist: Kolhapur

4. Krishnat Keraba Chavan
Age: 26 Yrs., Occ: Agriculture
Residing at Male, Tal: Panhala
Dist: Kolhapur

5. Shobha Kerba Chavan
Age: 52 Yrs., Occ: Agriculture
Residing at Male, Tal: Panhala
Dist: Kolhapur

... Respondents

Mr. Yuvraj Narvankar a/w. Adv. Rahul Patil, Advocate for
Petitioner.

Adv. Prajakt M. Arjunwadkar a/w. Adv. Dhananjay A. Utture,
Advocate for Respondent Nos. 1 to 5.

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : DECEMBER 10, 2025

PRONOUNCED ON : DECEMBER 24, 2025

JUDGMENT:

1. Present petition takes exception to order dated 10th January 2020 passed by District Judge-4, Kolhapur in Miscellaneous Civil Appeal No. 146 of 2019, whereby application below Exhibit-5 filed by petitioner has been rejected and order granting injunction passed by Civil Judge, Junior Division, Panhala in Regular Civil Suit No. 130 of 2018 has been quashed and set aside.

2. Petitioner filed Regular Civil Suit No. 130 of 2018 seeking decree of perpetual injunction against defendants. It is contention of petitioner that he purchased suit property from Kerba Shankar Chavan and Parvati Shankar Chavan under registered sale deed dated 9th July 1993, and since then he is in possession of suit property. His name has been mutated in record of rights. He has carried out substantial development in land and is cultivating sugarcane, which he is supplying to sugar factory. Since 2018 defendants, who are unconcerned with suit property, have been

obstructing petitioner's possession, eventually, he filed suit along with application seeking temporary injunction.

3. Defendants/respondents refuted plaintiff's claim by filing written statement. In nutshell, it is contention of defendants that sale deed dated 9th July 1993 is without consideration. Petitioner/plaintiff had assured that he would provide employment to son of Kerba Shankar Chavan thus, relying upon assurance, sale deed was executed. However, possession of defendants continued over suit land. Now plaintiff is trying to obtain relief of injunction to secure possession.

4. Plaintiff's application for grant of temporary injunction was taken up for hearing before Trial Court. After considering rival submissions and material tendered into service, Trial Court granted temporary injunction in favour of plaintiff/petitioner, thereby restraining defendants from obstructing peaceful possession over suit property. Defendants carried aforesaid order in appeal before District Judge at Kolhapur, who allowed appeal, thereby setting aside order passed by Trial Court below Exhibit-5 and eventually rejected application of petitioner/plaintiff.

5. Mr. Yuvraj Narvankar, learned Advocate appearing for

petitioner, submits that petitioner acquired ownership of suit property under registered sale deed, which is intact and has never been challenged. There is voluminous evidence reflecting petitioner's possession over Gat No. 1529 in the form of mutation records and receipts of sugarcane supplied to various sugar factories. Defendants pleaded that sale deed is without consideration. However, validity of sale deed was never challenged by them. Trial Court, after considering pleadings and material on record, rightly allowed application Exhibit-5 restraining defendants from obstructing petitioner's possession. However, Appellate Court, by making observations beyond pleadings and contentions of parties, set aside order of injunction and rejected petitioner's application.

6. Per contra, Mr. Prajakt Arjunwadkar, learned Advocate appearing for respondent nos. 1 to 5, submits that plaintiff could not establish his possession over suit property. His claim is based on a sham document in the form of a sale deed. He points out that sale deed is in respect of an undivided portion of land and contents of sale deed reflect that no boundaries are specified for land under transaction. Plaintiff, at most, can seek partition of undivided share

and thereafter seek possession. He, being purchaser of an undivided share, cannot claim right over a specific portion of land. Appellate Court has rightly appreciated aforesaid legal and factual aspects and set aside injunction order.

7. Having considered submissions advanced by learned Advocates appearing for respective parties, it can be observed that plaintiff is claiming his right on the basis of registered sale deed dated 9th July 1993 executed by Kerba Shankar Chavan and Parvati Shankar Chavan, i.e., parents of respondents. Admittedly, sale deed is intact till date and has not been challenged before any Competent Court of jurisdiction in any proceedings, including present suit. In that view of matter, merely contention in written statement that sale deed is without consideration would not be sufficient to disown transaction. *Prima facie*, plaintiff has established his title to suit property.

8. Second aspect of matter is whether plaintiff is in possession of suit property. The stipulation in sale deed shows that 60 R land out of Gat No. 1529 was sold to plaintiff for consideration of Rs. 29,000/- and that he was put in possession on date of sale. Undisputedly, mutation has been effected in pursuance of aforesaid

sale deed in name of plaintiff. Defendants filed written statement wherein they took plea that sale deed of 1993 is without consideration and, secondly, that plaintiff has not acted upon his assurance to provide employment to defendants.

9. In light of aforesaid contentions of parties, it can be observed that defendants have not disputed execution of sale deed by their parents in favour of plaintiff. Trial Court observed that there is prima facie material to show that plaintiff was put in possession of suit property and eventually passed order of temporary injunction. However, Appellate Court reversed finding of Trial Court merely on ground that an undivided share was alienated in favour of plaintiff as such he was put in possession of a specified share, as boundaries are not mentioned in sale deed. Appellate Court also observed that there is no evidence to show that any specific area was given in possession of plaintiff after execution of sale deed thus, relying upon law laid down by Supreme Court in ***Ramdas vs. Seetabai***, reported in **AIR 2009 SC 2735**, held that plaintiff failed to prove prima facie case and balance of convenience.

10. On careful scrutiny of pleadings and evidence on record, this Court finds that observations of Appellate Court that plaintiff was

not put into possession of specific share of suit property are unsustainable. It appears that beyond a bare pleading in written statement, defendants have nowhere pleaded that plaintiff was put into joint possession or not put into specific area under sale deed. Stipulation in sale deed shows that plaintiff was put in possession of property, and there was no reason to hold that such possession was joint. Pertinently, sale deed was executed by two persons, i.e., parents of defendants when defendants were minor. Reference to “joint possession” in such context can be read as joint possession of vendors. While putting plaintiff in possession land in joint possession of vendors must have been given to plaintiff.

11. Apart from that, sugarcane supply receipts would reflect that plaintiff cultivated sugarcane and supplied same to sugar factory. Careful analysis of those receipts shows that sugarcane was cultivated in suit land. Although some receipts may not exactly support plaintiff’s case, defendants could not produce any counter-evidence showing continuation of their possession over suit property. Their written statement is a mere denial of plaintiff’s claim; without adopting appropriate remedy for setting aside same.

12. Supreme Court observed in case of ***Wander Ltd. Vs. Antox India (P) Ltd*** reported in ***1990 Supp SCC 727*** laid down parameter matters of jurisdiction of appellate Court, which reads as thus:

“the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. The appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion.”

13. In light of aforesaid legal position and factual aspects, Appellate Court was not justified in reversing order passed by Trial Court granting injunction in favour of petitioner/plaintiff.

14. At this stage, learned Advocates appearing for respective parties submit that during pendency of this Writ Petition,

proceedings before Trial Court have progressed and suit reached to an advance stage.

15. In that view of matter, following order is passed ;

ORDER

(i) Writ Petition is allowed.

(ii) Impugned order dated 10th January 2020 passed by District Judge -4 in Miscellaneous Civil Appeal No.146 of 2019 is hereby quashed and set aside.

(iii) Order dated dated 22nd March 2019 passed by Civil Judge, Junior Division below exhibit-5 in Regular Civil Suit No.130 of 2018 is restored.

(iv) Trial Court shall endeavour to decide suit on its own merits within a period of six months from date of this order, without being influenced by any observations made by this Court. Parties shall cooperate with suit proceedings.

(S. G. CHAPALGAONKAR, J.)

1. At this stage learned Advocate appearing for respondents seeks stay to this order to enable respondents to approach

Supreme Court, however for reasons recorded in this order request stands rejected.

(S. G. CHAPALGAONKAR, J.)