

Arun Sankpal

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4400 OF 2025

Ajay Vijay Bhosale & Anr

..Petitioners

Versus

Ashok Namdev Pisal & Ors

...Respondents

Dr. Uday Warunjikar, with Hrishikesh Nabar, for the Petitioner.

CORAM: N. J. JAMADAR, J.

DATED : 8th APRIL 2025

P.C.:

- 1.** Heard, Dr. Warunjikar, the learned Counsel for the Petitioners.
- 2.** The Petitioners-Plaintiff, assails the legality, propriety and correctness of a judgment and order dated 27th February 2025 passed by the learned District Judge, Malshiras, whereby, the Appeal preferred by the Petitioners came to be dismissed affirming an Order passed by the learned Civil Judge, Junior Division, Malshiras, dated 19th November 2024, thereby rejecting an Application for temporary injunction filed by the Petitioners-Plaintiffs to restrain the Respondents-Defendants from causing obstruction to the possession of the Plaintiff over the agricultural land bearing 2 H 50.50 R (“the Suit land”).
- 3.** The Plaintiffs claim to have purchased the suit property under a registered Sale Deed dated 29th May 2024 from Madhuri Shah, the holder thereof. The Plaintiffs were put in possession of the suit land.

The Defendants allegedly obstructed the cultivation of the suit land by the Plaintiffs through the Defendants have no right, title and interest, in the suit land. Hence the Suit for perpetual injunction.

4. The Defendants claimed that Rajiv Vora, one of the co-owners, had executed an Agreement for Sale in favour of the Defendants on 9th August 2014 and since then the Defendants were in possession of the suit land.

5. By an order dated 19th November 2024, the learned Civil Judge, Junior Division, Malshiras, declined to grant injunction in favour of the Plaintiff observing *inter alia* that the agricultural land bearing Gat No. 1352 was jointly owned by Madhuri Shah and her co-owners. There was no partition by metes and bounds amongst the co-owners. Thus, a definite portion of the said agricultural land could not have been sold to the Plaintiff. Consequently, the claim for exclusive possession over the suit land was not *prima facie* made out.

6. The learned District Judge found no error in the exercise of discretion of the Trial Court.

7. Dr. Warunjikar, the learned Counsel for the Petitioner, submitted that the Courts below have proceeded on an incorrect premise that the Plaintiffs were required to institute a Suit for partition as the Plaintiffs vendor and the other co-owners were shown to be joint holders of the suit land and there was no partition by metes and bounds. It was

submitted that the Plaintiff had purchased a specific portion of the land bearing Gat No 1352 under the registered Sale Deed, whereas the Defendants were banking upon an unregistered Sale Deed under which the co-owner had agreed to sell a part of Gat No. 1352 and the possession was to be delivered at the time of the execution of the Sale Deed.

8. I am afraid to accede to the submissions of Dr. Warunjikar. The Courts below have recorded a *prima facie* finding that the Plaintiffs were not in possession of the suit land. The Record of Rights of the suit land indicated that the co-owners were in common enjoyment of the suit land. There is no material to indicate that there was partition among the co-owners. In that view of the matter, the vendor of the Plaintiffs could not have claimed exclusive possession over a particular portion of the land bearing Gat No. 1352.

9. The view of the Trial Court that the Plaintiffs were not put in possession of the suit land as affirmed by the Appellate Court, is based on the evaluation of objective material.

10. Such concurrent *prima facie* findings as to the possession are not open for interference in exercise of supervisory jurisdiction.

11. The Petition, therefore, stands dismissed.

[N. J. JAMADAR, J.]

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