

Arun Sankpal

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5444 OF 2025

Mahesh Mohanrao Topale

..Petitioner

Versus

Abhijit Yashwant Injal & Ors

...Respondents

Mr. Sachin P Shetye, for the Petitioner.

CORAM: N. J. JAMADAR, J.

DATED : 28th APRIL 2025

P.C.:

- 1.** Heard the learned Counsel for the Petitioner.
- 2.** The challenge in this Petition is to a judgment and order dated 20th August 2024 passed by the learned District Judge, Gadhinglaj, whereby the Appeal preferred by the Petitioner-Plaintiff came to be dismissed affirming an order dated 21st December 2023 passed by the learned Civil Judge, Junior Division, Ajara, on an Application for temporary injunction in RCS No. 58 of 2023, thereby rejecting the said Application.
- 3.** The Petitioner instituted the Suit for a declaration, injunction and possession of the suit property on the premise that the grandfather of the Plaintiff, Vishnu Anant Topale had purchased the suit property. Defendant Nos. 2 to 6 had no right, title and interest therein. Yet,

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Defendant Nos. 2 to 6 by taking undue advantage of the mutation of names of their predecessors-in-title, Jagannath Mukund Topale in the City Survey Record, executed a registered Sale Deed in respect of House No. 190 in favour of Defendant No1 on 18th January 2023. On the strength of the said Sale Deed, the Defendant No.1 has started to cause obstruction to the possession and enjoyment of the Plaintiff and Defendant Nos. 7 to 28 over the suit property bearing House Nos. 189 and 190. Hence the Suit.

4. In the Suit, the Plaintiff preferred an Application for temporary injunction to restrain the Defendant No.1 from causing obstruction to the possession and enjoyment of the Plaintiff and Defendant Nos. 7 to 28 over the 15 ff x 16 ft room and from changing the nature of the suit property or creating any third party interest therein.

5. The Trial Court was persuaded to reject the Application. It was, *inter alia*, noted that the names of the predecessor-in-title of Defendant Nos. 2 to 6 were mutated to the Assessment Lists as well as the Record of Rights of the suit property. The learned District Judge found no error in the exercise of the discretion by the Trial Court.

6. Mr. Shetye, the learned Counsel for the Petitioner, submitted that the Courts below have proceeded on an incorrect premise that there was an oral partition between Vishnu and Mukund, the predecessor-in-title of Defendant Nos. 2 to 6. The suit property was purchased by

Vishnu alone. The Courts below could not have proceeded to decide the Application only on the basis of the entries in the Assessment list and the City Survey Record as those entries are made for fiscal purpose only.

7. I find it difficult to accede to the submissions of Mr. Shetye.

8. There is material on record to show that since the year 1952, the names of the predecessor-in-title of Defendant Nos. 2 to 6 were entered in the Assessment Lists and, subsequently, in the City Survey Record. *Prima facie*, the predecessor-in-title of Defendant Nos. 2 to 6 were shown to be in possession of the Suit property since 1952. The Courts below were thus justified in taking into account those entries in the Assessment Lists and the Record of Rights of the Suit land for over 75 years. Such *prima facie* finding of fact are not open for interference in exercise of the supervisory jurisdiction,

9. Petition thus stands dismissed.

[N. J. JAMADAR, J.]