

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
WRIT PETITION NO.10098 OF 2024**

1. Suvarna Shivaji Giri,
Since deceased, through Legal Heirs,
 - a. Shivaji Dhondiba Giri,
Age: 60 yrs., Occ: Farmer and Doctor,
R/o- Hupari, Tal- Hatkanangale,
Dist- Kolhapur.
 - b. Sagar Shivaji Giri,
Age: 44 yrs., Occ: Doctor,
R/o- Hupari, Tal- Hatkanangale,
Dist- Kolhapur.
 - c. Sarika Dipak Gosavi,
Age: 41 yrs., Occ: Housewife,
R/o- Ramnagar, Shiye,
Tal.- Karveer, Dist- Kolhapur.
 - d. Sanjivani Manoj Bharti,
Age: 39 yrs., Occ: Housewife,
R/o- Near Telephone Exchange,
Trambakeshwar, tal- Trambakeshwar,
Dist.- Nashik.

..Petitioners
(Orig. Plaintiffs)

Versus

1. Housabai Narayan Kulkarni,
Since Deceased, through legal heirs,
 - a. Appasaheb Narayani Kulkarni,
Age: 77 yrs., Occ: Retired,
R/o- Selke Chowk, Shivaji Nagar,
Vartak Nagar, Thane, Maharashtra.
2. Vijaymala Appasaheb Diwan,
Age: 73 yrs., Occ: Housewife,
3. Suresh Narayan Kulkarni,
Age: 70 yrs., Occ: Business,
4. Sarojini Ashok Diwan,
Age: 73 yrs., Occ: Housewife,

5. Babasaheb Ashok Diwan,
Age: 48 yrs., Occ: Farmer,
 6. Netaji Ashok Diwan,
Age: 46 yrs., Occ: Farmer,
 7. Narayan Ashok Diwan,
Age: 43 yrs., Occ: Farmer,
No.2 to 7 all residing at,
Selke Chowk, Shivaji Nagar,
Vartak Nagar, Thane, Maharashtra.
- ..Respondents
(Orig. Defendants)

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Mr. Shrikant Ganbavale i/by Mr. Shantanu Patil, Advocate for
Petitioners.

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CORAM : S. G. CHAPALGAONKAR, J.
DATED : 26th SEPTEMBER, 2025.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of parties, matter is taken up for final hearing at admission stage.
2. The petitioners/original plaintiffs impugn order dated 14.03.2023 passed by learned District Judge, Ichalkaranji in Miscellaneous Civil Appeal No.26/2023, thereby upholding order dated 23.03.2023 passed by learned Civil Judge Junior Division, Ichalkaranji below Exhibit-5 in Regular Civil Suit No.433/2018.
3. The petitioners instituted Regular Civil Suit No.433/2018 seeking relief of specific performance of contract, declaration and injunction on the basis of agreement to sale dated 16.05.1995 executed by respondents. It is contention of petitioners that petitioners were interested in purchasing suit property. The respondent nos.1 to 3

agreed to sale out suit property @ Rs.1,35,000/- per acre i.e. for total consideration of Rs.2,02,500/-. Accordingly, agreement to sale dated 16.05.1995 was executed. The earnest amount of Rs.75,000/- was passed on to respondent nos.1 to 3. However, due to encumbrances levied on suit property, sale deed could not be executed. The respondent nos.1 to 3 assured petitioners to take steps for removal of encumbrances. The petitioners were put into possession of suit property. Accordingly, their names were entered in record of rights by order of Tahsildar dated 26.11.2003.

4. The respondent nos.1 to 3 executed Relinquishment Deed dated 23.05.2018 in respect of suit property in favour of respondent nos.4 to 7. Since then, they are claiming to be owners of suit property and disturbing peaceful possession of petitioners. The petitioners called upon respondents to execute sale deed. Since they failed to reply, Regular Civil Suit No.433/2018 has been filed and application Exhibit-5 was moved for grant of temporary injunction. However, same was rejected. The petitioners then approached District Court vide Miscellaneous Civil Appeal No.26/2023 assailing order of Trial Court. However, said Appeal came to be dismissed. Hence, this Writ Petition.

5. Mr. Shrikant Ganabavale, learned Advocate appearing for petitioners invites attention of this Court to agreement to sale and submits that there is clear stipulation that petitioners were put into possession. He would submit that there were consistent mutation

entries from year 2006-2007 to 2016-2017 depicting petitioners' possession over suit property. Apart from that, there is evidence in form of supply of sugarcane cultivated in suit land and photographs depicting petitioners possession over suit property. Despite voluminous evidence depicting petitioners' possession, learned Trial Court rejected application below Exhibit-5 and same is confirmed by learned Appellate Court. He would, therefore, urge to allow Writ Petition and grant temporary injunction as prayed.

6. Having considered submissions advanced by learned Advocates appearing for respective parties, it can be observed that suit is filed seeking decree of specific performance of contract based on agreement to sale dated 16.05.1995. It is unregistered document. Subsequently, it is impounded and stamp duty is paid. It is true that, mutation record upto 2016 depicts entry of petitioners names as possessors over suit land. However, mutation entries from year 2017 onward clearly shows that respondents are owners and possessors of suit property. *Prima facie*, recent mutation record would be relevant to infer possession of respondents. It can be observed that since 1995 petitioners did not sought specific performance of contract. No documentary evidence is placed on record to show that on the basis of agreement to sale they were ready and willing to perform their part of contract. *Prima facie*, contention of petitioners regarding their possession over suit property cannot be accepted.

7. The learned Trial Court as well as First Appellate Court have elaborately discussed material tendered by parties and recorded *prima facie* finding upholding respondents' possession over suit property. Apparently, view taken by Courts below is based on correct appreciation of material on record. No perversity is shown in impugned order.

8. In result, Writ Petition sans merit. Hence, dismissed. However, in facts of present case, as suit is pending since 2018, learned Trial Court shall endeavour to dispose same expeditiously and in any case, within period of one year from date of this order.

9. Rule stands discharged.

(S. G. CHAPALGAONKAR)
JUDGE