

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

WRIT PETITION NO. 14794 OF 2024

Rukmini Popat More ...Petitioner

Versus

Dhanaji Hanmantrao Deshmukh and ors. ...Respondents

Mr. Gaurav Kalekar, for the Petitioner.

CORAM: N. J. JAMADAR, J.

DATED: 8th JANUARY, 2025

ORDER:-

SANTOSH
SUBHASH
KULKARNI

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1. This petition assails legality, propriety and correctness of a judgment and order dated 26th March, 2024 passed by the learned Extra Jt. District Judge, Vaduj, in Misc. Civil Appeal No.44 of 2023, dismissing the appeal preferred by the petitioner – defendant against an order dated 1st July, 2023, passed by the learned Civil Judge, Junior Division, Vaduj, restraining her from causing obstruction to the possession of the plaintiffs over the suit property till the final decision of the suit.

2. Mr. Kalekar, the learned Counsel for the petitioner, would urge that both the Courts have committed a manifest error in granting injunction against the petitioner – defendant though there was material to show that the defendant has

been in lawful possession and cultivation of the suit land. Reliance was sought to be placed on the Affidavits of the alleged adjacent landholders, who have affirmed that the defendant has been in possession of the suit land.

3. I am afraid to accede to the submissions of Mr. Kalekar. Firstly, there are concurrent *prima faice* findings of facts that the father of the defendant had sold the suit land to the predecessor in title of the plaintiff under a registered Sale Deed executed on 28th June 1993, possession of the suit land was delivered by the deceased father of the defendant to the predecessor-in-title of the plaintiffs and, subsequently, in the year 1998, the father of the defendant purported to bequeath the suit land to the defendant under a Will dated 21st May, 1998. These, *prima facie* findings of facts are based on the material placed on record. The affidavits of witnesses sought to be relied upon by the defendants, do not command precedence over the documents, on the strength of which the aforesaid *prima facie* findings have been recorded.

4. Secondly, the Courts below have correctly applied the principles that possession follows title and the subsequent disposition yields to the prior disposition under Section 48 of the Transfer of Property Act, 1882. Thirdly, the Courts have

noted that the defendant had in fact executed an agreement for sale of the suit land on the strength of mutation of her name to the record of rights to the suit land and, therefore, the apprehension of breach of obligations on the part of the defendant was justified.

5. I am, therefore, inclined to hold that no case for interference with the concurrent findings in exercise of extraordinary writ jurisdiction is made out. Petition, thus, deserves to be dismissed.

6. The petition stands dismissed.

[N. J. JAMADAR, J.]