

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9730 OF 2022**

1. Ahmed Khudabaksh Bagwan,
Age: 34 Years, Occu.: Business,
R/o. 603, Shukrawar Peth,
Solapur.
2. Chandbasha Abdul Shaikh,
Age: 54 Years, Occu.: Business,
R/o. 54, Jamma Vasti,
Bhavani Peth, Solapur.
3. Ajij Babulal Shaikh,
Age: 42 Years, Occu.: Business,
R/o. 54, Jamma Vasti, Bhavani Peth,
Solapur.Petitioners

Vs.

1. Mahadeo Krishna Ghadage,
Age: 62 Years, Occu.: Agriculture,
R/o. Block No.23, 24, Bidi Gharkul,
Samata Nagar.
At present, Bhose (Nandeshwar),
Tal.Mangalvedha, District : Solapur.
2. M. Shafi A. Rahim Siddiki,
Age: 48 Years, Occu.: Business,
R/o.: Sahara Nagar, Majrewadi,
Solapur.Respondents

Mr. Valmiky Narvekar (Through VC), i/b. M. S. Mulla, for the
Petitioners.

Mr. Anvil S. Kalekar, for the Respondents.

**CORAM : S. G. CHAPALGAONKAR, J.
RESERVED ON: 13th OCTOBER 2025
PRONOUNCED ON : 16th OCTOBER 2025**

JUDGMENT :-

1. Present Writ Petition takes exception to Judgment and order dated 1st July 2022 passed by learned District Judge, Solapur in Miscellaneous Civil Appeal No.47 of 2021.

2. Respondent No.1 instituted Regular Civil Suit No.229 of 2019 before Civil Judge Senior Division at Solapur for declaration and perpetual injunction. It is contention of Respondent No.1/plaintiff that he is Ex-Serviceman. In the year 1992, he was looking for a plot for construction of house at Solapur. He came to know that defendant No.1 has floated a scheme of plots and selling the same to different persons. When he took further information from defendant No.1, he informed that Mr. Ashokkumar Udhavrao Kekde is original owner and he has executed Power of Attorney in his favour and he is accordingly selling the plots. The defendant No.1 executed registered sale deed dated 27th November 1992 in respect of Plot Nos.23 and 24 admeasuring 2000 sq.ft. in favour of plaintiff. Eventually, plaintiff was put into possession, the mutation was recorded vide Mutation Entry No.30607 in the name of plaintiff. According to plaintiff, while he was in service, he could not raise construction. Further, on retirement, due to educational expenses of

children and other priorities, the construction could not be raised.

3. The defendant No.1 illegally executed sale deed on 7th December 2018 in respect of plaintiff's property in favour of defendant No.2. Thereafter, on 14th February 2019 and 26th February 2019, defendant No.2 transferred the said property in favour of defendant Nos.3 and 4. According to plaintiff, those sale deeds are illegal and invalid and does not bind his rights. The plaintiff has made complaint regarding sale-deeds to Collector as well as Sub-Registrar, Solapur, but no cognizance was taken. Hence, he filed suit seeking declaration against aforesaid sale deeds and perpetual injunction.

4. The defendant Nos.1 to 4 filed a common written statement raising defense that defendant No.1 was not owner of suit property. The sale deed dated 27th November 1992 is executed by defendant No.1 Shafi showing himself as owner. The sale deed executed by him is illegal and does not confer any right upon the plaintiff. However, they admitted that owner of property Mr. Ashokkumar Udhavrao Kekde has executed Power of Attorney dated 2nd July 1992 in favour of defendant No.1.

5. The plaintiff filed an application below Exhibit 27 seeking mandatory injunction to remove the tin shed installed on 24th March 2020 by defendants taking disadvantage of pandemic situation. The aforesaid application opposed by defendants contending that construction of tin shed is made on 9th May 2019, i.e., three months prior to institution of suit. The defendants have obtained electricity connection and also paid the electricity charges. The Trial Court after considering rival contentions rejected application filed by plaintiff vide its order dated 1st July 2021. Plaintiff filed appeal before learned District Judge, Solapur, who allowed the appeal filed by plaintiff by setting aside the order of Trial Court and granted ad-interim mandatory injunction against defendants asking them to remove tin shed constructed on suit property within a period of two months from date of order. Aggrieved defendants filed the present Writ Petition before this Court.

6. Heard learned Advocates appearing for respective parties. Mr. Valmiky Narvekar, learned Advocate appearing for Petitioners/defendants made twofold submission. By inviting attention of this Court to sale deed of plaintiff, he points out that sale

deed is executed by defendant No.1 in his personal capacity, although he was not owner. Mr. Ashokkumar Udhavrao Kekde was owner of suit property. He would point out that in a title clause of sale deed or from contents thereof, it is not discernible that defendant No.1 executed sale deed in his capacity as Power of Attorney Holder. Mr. Narvekar further submits that sale deed executed in favour of defendant No.2 would show that the same is executed by defendant No.1 in a capacity of Power of Attorney Holder on behalf of Ashokkumar Udhavrao Kekde. As such, Mr. Narvekar attacked on validity of title of plaintiff. Secondly, he contends that there is no evidence as to possession of plaintiff over the suit property. On the other hand, defendants have placed on record receipts as to electricity charges and receipts regarding assessment of tax paid to Municipal Corporation, which clearly depict longstanding settled possession of Petitioners/defendants. He points out that the construction of shed has been raised prior to institution of suit. Therefore, there is no reason to grant extraordinary relief of temporary mandatory injunction, which is in the nature of final relief. According to him, ad-interim mandatory injunction can be granted only when strong circumstances requiring

protection of rights and interest of parties are made out. Unless the Court is satisfied that withholding of said relief would prick conscience of Court or do violence to sense of justice, the Court need not grant such extraordinary relief. He would, therefore, criticized the order of learned District Judge and supports the order of Trial Court.

7. Per contra, Mr. Anvil Kalekar, learned Advocate appearing for Respondent No.1 has made out a case that Petitioners/defendants in collusion with each other are trying to grab the property of plaintiff and created a false record and raised construction taking disadvantage of pandemic situation. In these circumstances, Appellate Court is justified in passing order in the nature of interim mandatory injunction directing removal of tin shed constructed by defendants.

8. Having considered submissions advanced by learned Advocates appearing for respective parties, it is evident that Respondent No.1 is claiming right over the suit property on the basis of registered sale deed of 1992. He is Ex-Serviceman and purchased the property under registered sale deed executed by defendant No.1, who was

Power of Attorney Holder of original owner. Pertinently, defendants have admitted that defendant No.1 Shafi Siddiki was holding registered Power of Attorney dated 2nd July 1992 executed by original owner. Apparently, sale deed dated 27th November 1992 executed in favour of plaintiff/Respondent was based on such Power of Attorney. The sale deed is acted upon. Eventually, mutation was recorded in the name of Respondent No.1. In 2018, the defendant No.1 executed sale deed dated 17th December 2018 in favour of defendant No.2 for some property. Apparently, such a sale deed would not confer any title upon defendant No.2 and consequently upon defendant Nos.3 and 4, who are purchasers from defendant No.2.

9. Although, sale deed of Respondent No.1/plaintiff depicts that defendant No.1 represented himself as owner of property, the fact remains that original owner of property has not challenged sale deed or title of Respondent No.1/plaintiff. Once it is admitted that defendant No.1 was holding registered Power of Attorney from original owner and then executed sale deed in favour of plaintiff, *prima facie*, the title of plaintiff will have to be approved. The next

contention raised on behalf of Petitioners is that plaintiff was never in possession of suit plots and defendants, in pursuance to their sale deeds, acquired possession and raised construction of shed for enjoyment of property. The defendant Nos.3 and 4 are claiming their rights based on respective sale deeds dated 14th February 2019 and 26th February 2019. As observed in aforesaid paragraph, *prima facie*, those sale deeds of 2019 cannot be accepted as valid and legal, in wake of ownership of plaintiff on the basis of sale deed dated 27th November 1992. So far as possession is concerned, defendants have merely relied upon two documents; firstly, the documents pertaining to electricity charges and secondly, documents relating to corporation taxes. The Appellate Court has rightly dealt with aforesaid documents and found that those documents are made in attempt to create evidence. The Appellate Court observed that on the basis of electricity bills dated 9th May 2019, inference can be drawn regarding obtaining of electricity supply, however, there is no further record regarding the use of electricity. The construction of tin shed cannot be presumed to be made prior to obtaining of electricity connection. The District Court accepted plaintiff's case that construction has been raised after filing of suit or during COVID period.

10. In light of aforesaid circumstances, learned District Judge appears to have exercised the discretion, while granting relief of mandatory injunction. This Court finds that Respondent No.1/plaintiff, who is Ex-Serviceman and acquired property in the year 1992 is sought to be dispossessed by defendants by creating false record, particularly invalid sale deeds and the documents as to electricity supply. However, from such record, it can be inferred that they are attempting to encroach upon the plaintiff's property and to dispossess him. The defendants cannot claim that they are in settled possession.

11. On the other hand, the attempt of defendants to grab property of Ex-Serviceman is writ large from the documentary evidence on record. This Court do not find any reason to interfere in the order passed by learned District Judge in exercise of writ jurisdiction of this Court.

12. In result, Writ Petition stands rejected.

(S. G. CHAPALGAONKAR, J.)

13. At this stage, learned Advocate appearing for Petitioners seeks continuation of interim protection for a period of two weeks from today. Learned Advocate appearing for Respondents vehemently opposed continuation of interim protection.

14. For the reason as recorded in aforesaid Judgment, request for continuation of interim relief is rejected.

(S. G. CHAPALGAONKAR, J.)

Digitally
signed by
RAJU
DATTATRAYA
GAIKWAD
Date:
2025.10.17
17:11:14
+0530