

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

WRIT PETITION NO.10871 OF 2025

1) Shri Shankar Gundu Gavade
Age 73 years, Occ. Agriculturist

2) Shri Vishnu Yamaji More
Age 65 years, Occ. Agriculturist Both
R/o/ Turkewadi, Taluka: Chandgad Dist.
Kolhapur.

... Petitioners

V/s.

1) Shri. Satu Ramu Kokitkar, Age 74
Years, Occu. - Agriculture, R/o.
Turkewadi, Tal. Chandgad, Dist.
Kolhapur.

2) Smt. Shevanta Mashnu Kokitkar,
(wrongly shown in title "Shri")
Age 65 Years, Occu. - Agriculture, R/o.
Turkewadi, Tal. Chandgad, Dist.
Kolhapur.

3) Vithal Yamaji More,
Since deceased by his L.Rs.

3/A] Shri. Prakash Vithal More, Age 41
Years, Occu. - Agriculture,

3/B] Shri. Arun Vithal More, Age 35
Years, Occu.- Agriculture,

3/C] Smt. Rukmini Vithal More, Age 75
Years, Occu. - Agriculture,
No. 3/A] to 3/C] R/o. Yeshwantnagar,
Tal. Chandgad, Dist. Kolhapur

... Respondents

Mr. Tejpal Ingale a/w. Adv. Sourabh Patil a/w. Aditya Patil, Advocate for the petitioner.

Mr. Vinay B. Mahajan a/w. Adv. Amey V. Mahajan, Advocate for the respondents.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : 3 DECEMBER, 2025

JUDGMENT:

1. Petitioners take exception to judgment and order dated 8th July 2025 passed by District Judge-2, Gadhinglaj in Miscellaneous Appeal No. 34 of 2024 thereby upholding judgment and order dated 2nd September 2024 passed below Exhibit-5 in Regular Civil Suit No. 115 of 2015.

2. Petitioners are defendants nos. 2 and 3 in Regular Civil Suit No. 115 of 2015. Respondent nos. 1 and 2 instituted Regular Civil Suit No. 115 of 2015 before Joint Civil Judge, Junior Division, Chandgad seeking relief of permanent injunction in respect of suit land bearing Gat No. 75, Old Survey No. 118, admeasuring 2H. It is contention of plaintiffs that Shri Bhairu Kedari Kokitkar was tenant of suit property. After his death, his sons Ramu and Joti were cultivating suit property. Plaintiffs are claiming through their father. Ram who died on 21st November 1989. Name of plaintiff

no. 1 and his brother Mashnu, husband of plaintiff no. 2, is mutated in record of rights of suit property. On 27th September 2015, defendants tried to disturb plaintiffs' possession. Hence, they filed suit.

3. Defendants contend that on 6th May 1975 Ramu, Mashnu and plaintiff no. 1, sold 2 acres 10 gunthas of land to defendant nos. 1 and 2 and since then they are in possession of suit property. Defendant no. 3 came with a case that Mashnu, i.e., husband of plaintiff no. 2, obtained an amount of Rs. 30,000/- from him and put him in possession of land as permanent tenant. Trial Court, after considering rival submissions, allowed plaintiffs' application and temporarily restrained defendants from causing obstruction to plaintiffs possession over suit property. Appeal filed by defendant nos. 2 and 3 is also dismissed by District Court.

4. Mr. Tajpal Ingale, learned Advocate appearing on behalf of petitioners, submits that defendants are in possession on basis of Agreement dated 6th April 1975, Sale Deed dated 20th January 1991 and Lease Agreement dated 29th August 1992 executed in favour of defendants by plaintiffs or their predecessor.

5. Plaintiffs have not denied execution of aforesaid documents.

Contents of documents are sufficient to show that defendants are in possession of suit property. Only because name of defendants is not carried forward in record of rights, their possession cannot be disputed.

6. Having considered submissions advanced by learned Advocate appearing for respective parties, it can be observed that defendants are claiming their rights on basis of documents dated 6th April 1975, 20th January 1991 and 29th August 1992. Admittedly, there is no revenue record to show that those documents were acted upon and that defendants or their predecessor were put in possession of property. Except bare statement of defendants in written statement, there is no acceptable evidence to hold that defendants continued in possession of suit property. Although defendant nos. 1 and 2 relied upon sugarcane receipts and affidavit of Mr. Girgole Farnandis, an adjacent landholder, regarding actual possession of defendants, there is no documentary evidence to show that sugarcane receipts are pertaining to crop harvested from suit land.

7. Appellate Court has rightly observed that since 1974-1975 there would have been some documentary evidence reflecting

possession of defendants. Even in case of defendant no. 3, he could not bring on record evidence to show that on basis of Kabulayat dated 29th August 1992 he was put in actual possession. A copy of written statement filed by plaintiff in Regular Civil Suit No. 20 of 2004 was relied upon by defendants to contend that plaintiffs admitted their possession. However, particulars of that suit are not placed on record so as to appreciate its contents. Trial Court as well as learned District Judge have considered aforesaid aspects in great detail and held in favour of plaintiffs. In this backdrop reference can be given to observations of Supreme Court in case of *Wander Ltd. And Anr. vs Antox India P. Ltd.* in 1990 SCC (Supp) 727 particularly in paragraph no.9 which reads thus :-

“The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would

normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion."

8. In light of aforesaid exposition of law, this Court does not find any reason to invoke writ jurisdiction of this Court and upset order impugned.

9. In result, Writ petition sans merit. Hence, dismissed.

(S. G. CHAPALGAONKAR, J.)