

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.468 OF 2025
WITH
INTERIM APPLICATION NO.11026 OF 2025**

1. Kusum Ganapati Patil.
Age- 80 years, Occupation- Agriculture.
2. Karna Ganapati Patil,
Age- 62 years, Occupation- Agriculture,
3. Pradip Ganapati Patil,
Age- 60 years, Occupation- Agriculture,

All R/o- Aitawade Khurd, Taluka- Walwa,
District- Sangli.
4. Rekha Balaso Patil,
Age- 64 years, Occupation- Household,
R/o- Kande, Taluka- Shirala,
District- Sangli.
5. Ujawala Chandrakant Patil,
Age-54 years, Occupation- Household,
R/o- Padali, Taluka- Shirala,
District- Sangli.

---Appellants
(Original Plaintiffs)

Versus

1. Chingubai Raghunath Jadhav,
Since deceased through legal heirs,
- 1A. Bhagwan Raghunath Jadhav,
Age: 67 years, Occupation: Agriculture,
- 1B. Shobha Baban Jadhav,
Age: 52 years, Occupation: Household,

- 1C. Vaibhav Baban Jadhav,
Age: 28 years, Occupation: Agriculture,
- 1C. Vishal Baban Jadhav,
Age: 25 years, Occupation: Education,
- 1D. Kamal Maruti Jadhav,
Age: 62 years, Occupation: Household,
2. Nanaso Pandurang Jadhav,
Age: 52 years, Occupation: Agriculture,
3. Jaykar Pandurang Jadhav,
Age: 47 years, Occupation: Agriculture,
4. Dhanaji Sarjerao Jadhav,
Age: 52 years, Occupation: Agriculture,
5. Prakash Sarjerao Jadhav,
Age: 47 years, Occupation: Agriculture,
6. Shashikant Dinkar Jadhav,
Age: 37 years, Occupation: Agriculture,
All R/o- Aitawade Khurd, Taluka- Walwa,
District- Sangli.

.....Respondents
(Orig. Defendants)

Mr. Umesh H. Pawar, for the Appellants/Applicants.

Mr. Tejpal Ingale with Ms. Vrunali Vilankar & Mr. Sourabh Patil, i/b.

Mr. Nikhil Pwawar, for Respondents.

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON: 7th NOVEMBER 2025

PRONOUNCED ON : 12th NOVEMBER 2025

JUDGMENT :-

1. The present appeal takes exception to order dated 21st August 2025 passed by District Judge-2, Islampur below Exhibit 5 in Regular

Civil Appeal No.36 of 2025, whereby the Appellants' prayer for grant of temporary injunction pending appeal before District Judge has been rejected. (The parties herein are referred to as per their original status in Regular Civil Suit No.306 of 2013).

2. The present Appellants are original plaintiffs in R.C.S.No.306 of 2013. They instituted the said suit against Respondents (original defendants) claiming perpetual injunction. It is contention of plaintiffs that suit land i.e., Gat No.654/1 (Old Gat No.719/1) and Gat No.654/2 (Old Gat No.719) were originally owned by Mr Nagesh and Rajendra Joshi, The plaintiffs are put in possession of suit land by original owner and they are cultivating the land since last 70 years. According to plaintiffs, the defenders had instituted Regular Civil Suit No.298 of 1994 against them seeking relief of possession in respect of suit properties. Defendants claimed right over the property through their predecessor Dnyanu Vithu Jadhav, being tenant over the suit property. According to defendants, Dnyanu was protected tenant on Tillers day i.e., on 1st April 1957. As such, he became owner. The certificate under Section 32-M of Bombay Tenancy and Agriculture Lands Act, 1948 (For Short, '**the Act**') has

been issued in favour of defendants. The plaintiffs contend that R.C.S.No.298 of 1994 filed by defendants has been dismissed, however, on the basis of certificate dated 28th January 2012 issued under Section 32-M of the Act and consequential Mutation Entry dated 14th March 2013, they are claiming right over property and disturbing possession of plaintiffs. Hence, the suit is instituted for relief as claimed.

3. The defendants filed written statement and denied tenancy right as claimed by plaintiffs. According to them, mutation entries recorded in the name of plaintiffs are bogus. The suit property in R.C.S.No.298 of 1994 was different. The certificate under Section 32-M of the Act has been issued in their favour by Competent Authority. The purchase price as fixed under Section 32-G of the Act, has been paid. The plaintiffs are unconcerned with the suit property. The trial Court framed issues based on pleadings of parties, recorded evidence and finally, dismissed suit observing that plaintiffs failed to prove their legal possession over the suit property, which disentitle them to claim relief of injunction.

4. Aggrieved defendants filed Regular Civil Appeal No.36 of 2025

before District Judge at Islampur along with application below Exhibit 5 seeking relief of temporary injunction pending appeal. The learned District Judge rejected said application vide impugned order dated 21st August 2025. Hence, this appeal against order.

5. Heard learned Advocates appearing for respective parties. By consent of parties, Appeal is taken up for final disposal at admission stage.

6. Mr. Umesh Pawar, learned Advocate appearing for Appellants submits that since 1980, revenue record consistently depict plaintiffs' possession over suit property. The defendants had instituted R.C.S.No.298 of 1994 against plaintiffs for possession of suit property and same has been dismissed. The defendants, suppressing said fact, obtained certificate dated 28th January 2012 under Section 32-M of the Act and eventually, mutated their names in record of rights and started disturbing possession of plaintiffs. The trial Court relying upon certificate under Section 32-M of the Act discarded plaintiffs' claim and erroneously dismissed the suit. He points out that during pendency of suit, temporary injunction was granted in favour of plaintiffs and it was in operation till April 2025. The same

has been continued till today in the appeal. He would submit that learned District Judge without appreciating grounds of appeal, rejected plaintiffs' prayer for temporary injunction.

7. Per Contra, Mr Tejpal Ingle, learned Advocate appearing for defendants supports impugned order. He would submit that certificate under Section 32-M of the Act raises presumption of ownership and possession in favour of defendants. The mutation entries recorded in the names of plaintiffs were hollow. There is nothing on record to show that plaintiffs were put in possession by original owner or they were in authorized possession. Mr. Ingale would submit that on the basis of mutation entries, plaintiffs cannot claim settled possession or right to seek injunction against true owner. In support of his contention, he relied upon observation of Supreme Court in case of *Kayalulla Parambath Moidu Haji v. Namboodiyil Vinodan*¹ and *State of U.P. & Ors. v. Ram Sukhi Devi*² and observations of this Court in case *Pushpalata Narayan Thorbole v. Purushottam Dattatray Prabhu (Since deceased through LRs.) Baliram Purushottam Prabhu Tendolkar & Ors.*³

1 (2022) 20 SCC 310.

2 (2005) 9 SCC 733.

3 2019 (2) Mh.L.J. 248.

8. Having considered submissions advanced by learned Advocates appearing for respective parties and after going through material tendered into service before this Court, it can be observed that plaintiffs filed suit simplicitor for injunction asserting their longstanding and continuous possession over suit property. They relied upon mutation record in support of their contentions. The defendants relied upon certificate dated 28th January 2012 granted under Section 32-M of the Act and consequential mutation entry dated 14th March 2013 to contend that their predecessor Dnyanu Jadhav was protected tenant and ownership has been conferred upon them. The trial Court dismissed the suit of plaintiffs observing that certificate under Section 32-M of the Act is sufficient to rebut the presumption of mutation entries. The possession of plaintiffs cannot be said to be legal and proper, so as to grant relief of injunction. The Appellate Court while rejecting plaintiffs' application for grant of temporary injunction relied upon observations of trial Court. In this background, it is necessary to examine whether plaintiffs *prima facie* establish the case of their legal possession over the suit property. Secondly, whether such possession entitles them to seek temporary injunction pending appeal in wake of findings recorded by trial Court.

9. Undisputedly, present suit is filed for simplicitor injunction. In such case, it is necessary to find out who is in possession of suit property. Apparently, mutation record since 1980 depicts that plaintiffs were continuously in possession of suit property. The record of rights raises presumption under Section 157 of Maharashtra Land Revenue Code, 1966 (For Short, '**MLR Code**'), which is rebuttable presumption. In present case, longstanding mutation record suggests that plaintiffs are in settled possession of suit property. Even during pendency of suit, temporary injunction was granted in their favour. It was in operation from 2013 till dismissal of suit in the year 2024. Even thereafter, it has been continued till this date.

10. The trial Court as well as Appellate Court observed that presumption available under Section 157 of MLR Code has been rebutted in view of certificate under Section 32-M of the Act possessed by defendants. However, fact remains that plaintiff is litigating against said certificate before the Competent Authority and till this date, there is no decision on merits conferring finality to certificate. Pertinently, original land owner is stated to have obtained

certificate under Section 88-M of the Act, thereby exempting suit land from application of Section 32 of the Act. Therefore, while considering *prima facie* case, presumption of correctness attached to consistent mutation entries cannot be treated as rebutted on the basis of certificate under Section 32-M of the Act. *Prima facie* finding of trial Court on issue of possession cannot be countenanced.

11. Apparently, substantive appeal against Judgment of trial Court is pending consideration before District Judge, who, being last fact finding Court, requires to re-appreciate pleadings and evidence on record. In such backdrop, it is proper to maintain *status quo* as to possession of parties pending appeal. In present case, there is longstanding mutation record from 1980 depicting plaintiffs' possession. Similarly, there was protection of temporary injunction in favour of plaintiffs from 2013 till dismissal of suit. It is trite that even a person in settled possession is entitled for protection against true owner. The reference can be given to observations of Supreme Court in case of ***Rame Gowda (Deceased) By LRs. v. M. Varadappa Naidu (Deceased) By LRs. & Anr.***⁴ wherein it is observed that it is settled possession or effective possession of a person without title

4 AIR 2004 SC 4609.

which would entitle him to protect his position even as against true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by catena of decisions. The Supreme Court has further elaborated that for grant of such protection, the person has to demonstrate his actual possession over suit property for sufficiently long period to the knowledge of owner.

12. In present case, mutation record since 1980 *prima facie* depicts possession of plaintiffs over suit property. The Appellate Court would deal with presumption attached to certificate under Section 32-M of the Act and its legal effect at the time of final hearing of appeal. The Appellate Court would also require to consider if certificate under Section 32-M of the Act raises presumption of possession over suit property, so also, rights of possessor of certificate as against person in settled possession of suit property. However, in facts of the case, this Court finds that the Appellate Court fell in jurisdictional error while refusing temporary injunction pending appeal of plaintiff. In result, the following order:

ORDER

- i) The Appeal is allowed.
- ii) The impugned order dated 21st August 2025 passed by learned District Judge, Islampur, District Sangli in application filed below Exhibit 5 in Regular Civil Appeal No.36 of 2025 is quashed and set aside
- iii) The application filed below Exhibit 5 is allowed.
- iv) The learned District Judge is requested to expedite hearing of appeal in peculiar facts of this case and endeavour to decide the appeal within a period of one year from date of this order
- v) Parties to co-operate for early disposal of appeal.

13. In view of disposal of appeal, Interim Application also stands disposed of.

(S. G. CHAPALGAONKAR, J.)