



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5429 OF 2023**

Shrihari Madhav Wagh ... Petitioner
versus
Pandurang Gopal Wagh and Ors. ... Respondents

Mr. Surel Shah, Sr. Advocate with Ms. Vrushali Maindad, Ms. Simran Raut,
Mr. Kunal Rathod, for Petitioner.
Mr. Mayur Mohite, for Respondent No.1.

CORAM : N.J.JAMADAR, J.

**RESERVED ON : 5 MARCH 2025
PRONOUNCED ON : 9 JUNE 2025**

JUDGMENT :

1. Rule. Rule made returnable forthwith, and, with the consent of the parties, heard finally.
2. This Petition under Article 227 of the Constitution of India assails the legality, propriety and correctness of a judgment and order dated 13 April 2022 passed by the learned District Judge, Satara in Misc. Civil Appeal No.7 of 2022, whereby the appeal preferred by Respondent Nos.1 to 3 – Plaintiff Nos.1 to 3, came to be allowed by setting aside the order dated 23 December 2021 passed by the learned Civil Judge, Phaltan on an application for temporary injunction (Exh. 23) in RCS No.16 of 2021, and thereby restraining the Defendants from causing obstruction to the possession and cultivation of the Plaintiffs of the land admeasuring 3 acres out of the suit lands described

in paragraph No.1 of the plaint, till the final disposal of the suit.

3. Respondent Nos.1 to 3 and the successors in interest of their siblings instituted a suit for partition and separate possession of their 26/96th undivided interest in the suit lands with the assertion that Tukaram Rawaji Wagh was the common ancestor. He had two sons; Gopal, who passed away on 23 July 1965, and Balu, who passed away on 16 October 1962. Sarubai, mother of Madhav and Radhabai, was the first wife of Gopal. Defendants Nos.1 and 2 are the son and daughter, respectively, of Madhav. Defendants Nos.3 to 11 are the successors in interest of Radhabai.

4. The Plaintiffs assert, after Sarubai passed away, Gopal solemnized marriage with Shantabai. Plaintiff Nos.1 to 3 and Manohar and Rukmini, were born to Shantabai by Gopal. Plaintiff Nos.4 to 6 and Defendant No.17 are the successors in interest of Rukmini. Balu, the other son of Tukaram had a son Tatyasaheb, who passed away on 9 August 2008. Defendant Nos.12 to 16 are the successors in interest of Tatyasaheb.

5. The Plaintiffs assert, the suit lands bearing old Survey No.24/2, 25/2, 25/3, 25/5 and 25/7 corresponding to Gat No.182, 183, 184, 185 and 186 situated at Mauje Sangavi, Tal Phaltan, Dist. Satara, admeasuring 5 H 90 R (more particularly described in paragraph No.1 of the plaint) are the ancestral and joint family properties of the Plaintiffs and Defendants. Tukaram, the common ancestor, had purchased the suit lands in the name of his elder son

Balu, under two separate registered Sale Deed dated 11 February 1953. Under the registered Lease Deed dated 22 March 1955, late Balu leased out the suit lands to Phaltan Sugar Works Limited, for a term of 25 years.

6. After the demise of Balu on 16 October 1962, the name of Tatyasaheb, the former's son, came to be mutated to the record of rights of the suit lands. Late Tatyasaheb preferred an application to the revenue authorities to mutate the name of Madhav, son of Gopal; the brother of Balu, to the $\frac{1}{2}$ share of the suit lands as the suit lands were the joint family properties left behind by Tukatam. Accordingly, the name of Madhav, the father of Defendant Nos.1 and 2 came to be mutated to the $\frac{1}{2}$ interest of the suit lands vide Mutation Entry No.2213 dated 18 November 1962. Madhav passed away on 17 February 2017. Though the suit lands were mutated in the record of rights in the name of Madhav, the Plaintiffs and Defendant Nos.3 to 11 and 17 collectively have $\frac{1}{2}$ undivided interest in the suit lands.

7. With the amendment introduced to the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, by the Amendment Act, 2012, Madhav filed an application for grant of $\frac{1}{2}$ portion of the suit lands falsely claiming that he was the sole heir of late Gopal Wagh. Plaintiff No.1 filed objections. The Committee, under the Chairmanship of District Collector, constituted to grant the land to erstwhile holders, opined that the parties shall get their entitlement adjudicated by the Civil Court.

8. Being aggrieved, the Plaintiff No.1 filed an appeal before the Sub-Divisional Officer, Phaltan. In the said appeal, a compromise was arrived at between Plaintiff No.1 and the predecessor in title of Defendant Nos.1 and 2. Late Madhav affirmed an affidavit giving his consent to allot three acres of land to the Plaintiff No.1. On the basis of the settlement arrived at between the parties and the compromise pursis, the appellate authority disposed off the appeal by an order dated 18 December 2014. However, before the said order could be given effect to, the Deputy Collector (Land Acquisition No.2, Satara), passed an order thereby confirming the earlier order passed by the Committee. Consequently, the names of Defendant Nos.1 and 2 came to be mutated to the record of rights of the suit lands.

9. The Plaintiffs assert, the suit properties are the ancestral and joint family properties of the Plaintiffs and Defendants. There has not been partition by meets and bounds, and, since Defendant Nos.1 and 2 threatened to oust the Plaintiffs, they were constrained to institute the suit for partition and separate possession of their shares in the suit lands.

10. In the said suit, it appears, after Defendant Nos.1 and 2 appeared, Plaintiff No.1 took out an application for temporary injunction asserting, *inter alia*, that pursuant to the settlement arrived at between late Madhav and Plaintiff No.1 in the aforesaid RTS Appeal, the Plaintiff No.1 was put in possession of three acres of land. Since the year 2014, Plaintiff No.1 has

been cultivating the sugarcane crop in the suit lands. As of the date of the application, about 70 tons of sugarcane was standing in the said three acres of land. By taking undue advantage of the mutation entry in the record of rights of the suit lands, the Defendant No.1 threatened to cut the sugarcane and supply the same to the sugar factory in his own name. Defendant No.1 also threatened to restrain the Plaintiff No.1 from cutting the sugarcane. Thus, the Plaintiff No.1 prayed for an injunction to restrain Defendant No.1 from causing obstruction to the possession of and cultivation by, the Plaintiffs of the said three acre land, till the final disposal of the suit.

11. The application was resisted by the contesting Defendants – Petitioners herein. The substance of the resistance put forth by the Defendants was that late Madhav was the absolute owner of $\frac{1}{2}$ interest in the suit lands. The $\frac{1}{2}$ interest of the suit lands had fallen to the share of Sarubai, the mother of Madhav, and the children of Shantabai, the second wife of Gopal, had no right, title and interest in the said $\frac{1}{2}$ portion of the suit lands. The claim of the Plaintiff that $\frac{1}{2}$ portion of the suit lands was the joint family property left behind by the deceased Gopal was not sustainable. The claim of settlement between late Madhav and Plaintiff No.1 was put in contest and it was categorically denied that late Madhav had affirmed an affidavit incorporating the alleged terms of the settlement.

12. By an order dated, 23 December 2021, learned Civil Judge was

persuaded to reject the application observing, inter alia, that in the order dated 1 April 2015 passed by the Sub-Divisional Officer, Phaltan, directing the distribution of the land, regranted to the erstwhile holders, the names of the Plaintiffs were not mentioned. Had the settlement been arrived at between the parties, as alleged, the names of Plaintiff Nos.1 to 3 must have found mention in the said order. Neither the Plaintiffs had challenged the said order nor any satisfactory explanation could be offered by the Plaintiffs. The affidavits of adjoining land holders and the persons who allegedly rendered services in the field in the occupation of the Plaintiffs, were found unworthy of credence. Thus, finding no prima facie case and the balance of convenience in favour of the Plaintiffs, the application came to be rejected.

13. The Plaintiffs – Respondent Nos.1 to 3 carried the matter in appeal. By the impugned order, the learned District Judge, Satara, was persuaded to interfere with the order passed by the trial Court. Learned District Judge was of the view that there was no reason to discard the affidavits of adjoining land holders. The omission to mutate the names of the Plaintiffs to the record of rights of the suit lands pursuant to the settlement arrived at between the parties, thereby allotting three acres of land to the Plaintiff No.1, was sought to be explained by ascribing a reason that the Plaintiff No.1 probably did not pay unearned income (nazarana) to the State Government.

14. Being aggrieved, the Defendant No.1 – Petitioner has invoked the writ

jurisdiction.

15. I have heard Mr. Surel Shah, learned Senior Advocate for the Petitioner and Mr. Mayur Mohite, learned Counsel for Respondent No.1, at some length. With the assistance of the learned Counsel for the parties, I have also perused the material on record, including the pleadings and the orders passed by the courts below.

16. Mr. Shah, learned Senior Advocate for the Petitioner submitted that the impugned order is wholly unsustainable as the learned District Judge has clearly transgressed the limits of interference in a discretionary order. What accentuates the situation, according to Mr. Shah, was a totally new case constructed by the appellate Court, which was never pleaded by the Plaintiff No.1. Learned District Judge, in the process, discarded the objective material which unmistakably indicates that the Plaintiff No.1 never claimed to be in possession of three acres of land, and instead based a finding on surmises and conjunctures.

17. Mr. Shah laid emphasis on the fact that the case of failure of the Plaintiff No.1 to deposit the unearned income (nazrana) with the State Government did not see the light of the day till the learned District Judge invented the said cause. Therefore, the impugned order warrants interference in exercise of supervisory jurisdiction. At any rate, Mr. Shah would urge that the Defendants, who are the co-owners of the suit lands, could not have been restrained by an

order of injunction. Plaintiff No.1 could not have laid claim of exclusive possession over the three acres of land.

18. Mr. Mohite, learned Counsel for Respondent No.1, made an endeavour to support the impugned order. Taking the Court through the copies of the purported settlement dated 20 July 2012, the order passed by the Committee constituted to re-grant the lands and the affidavit purportedly sworn by late Madhav Wagh on 20 August 2013, Mr. Mohite submitted that the factum of partition of the lands and delivery of possession of three acres of land out of 7 Acres and 12 Gunthas falling to the share of late Gopal can be said to have been established beyond the pale of controversy.

19. To add to this, the said settlement was indeed acted upon. Thus, vide an order dated 18 December 2014, the Sub-Divisional Officer directed that the lands be allotted in accordance with the terms of the settlement. However, vide an order dated 1 April 2015, the Deputy Collector and the Chairperson of the Committee allotted lands to late Madhav and Defendant Nos.12 to 16 only. In these circumstances, learned District Judge was fully justified in considering the affidavits of adjoining land holders and the persons who had rendered services in the field, which was in the cultivation of the Plaintiff No.1 to draw an inference of lawful possession. Such an order is not open for interference in exercise of limited writ jurisdiction, submitted Mr. Mohite.

20. Mr. Mohite joined the issue by canvassing a submission that when by

arrangement or otherwise, a co-owner is in exclusive possession of any part of the joint family property, it would be necessary to protect the exclusive possession of such co-owner till the decision of the suit for partition and separate possession. To this end, Mr. Mohite placed reliance on a judgment of this Court in the case of Pascoal Josinho Vaz s/o Francisco Vaz and Ors. V/s. Eugenia Helena Vaz and Ors.¹

21. To start with, it is necessary to note that under the provisions of Section 28-1AA of the Act, 1961, the State Government is empowered to grant the land to a person who had previously leased his land to the Undertaking and requires that land for his personal cultivation to the extent of the ceiling area as stipulated under the Act, 1961 or the actual area of the land leased by such person to the Undertaking, whichever is less, subject to such other terms and conditions as may be specified by the State Government in the said behalf.

22. Pursuant to the said enabling provision, the State Government had invited applications post 2012 Amendment Act, and, thereupon, Madhav, the predecessor in title of Defendant Nos.1 and 2 had sought regrant of 7.12 acres of land vide an application dated 13 June 2012 (page 100). In the said application, it was asserted that late Madhav was the original holder of the said lands. Plaintiff No.1 filed an objection (pages 112 to 114) asserting that the suit lands were the ancestral and self-acquired properties of Gopal, father

1 1998(1) ALL MR 751

of Plaintiff No.1 and late Madhav, step brother of Plaintiff No.1. In view of the dispute between Plaintiff No.1 and late Madhav, the committee constituted by the State Government to grant such surplus leased land to the erstwhile holders, opined that the parties shall get their rights adjudicated by the Civil Court. In connection with the aforesaid order, an Appeal i.e. RTS Appeal No.1246 of 2013 was preferred before the Sub-Divisional Officer, Phaltan, wherein late Madhav, Defendant Nos.12 to 16, successors in interest of late Balu, and Plaintiff No.1 allegedly arrived at the settlement and the consent terms were filed. Under the consent terms, late Madhav agreed to allot three acres of land out of the land admeasuring 7 Acres and 12 Gunthas which had fallen to the share of late Gopal to the Plaintiffs. Accordingly, late Madhav and Plaintiff No.1 had sworn affidavits. It seems, by an order dated 18 December 2014, the then Sub-Divisional Officer, Phaltan, directed that the allotment be made in terms of the settlement arrived at between the parties. However, vide order dated 1 April 2015, the land came to be allotted to Madhav and Defendant Nos.12 to 16 only.

23. The learned Civil Judge was not persuaded to place reliance on the affidavits of the adjoining land holders and the service providers to draw an inference of possession and cultivation of Plaintiff No.1 over the three acres of land, as there was no other material in the form of record of rights of the suit lands indicating that the settlement between the parties was given effect to.

The learned Civil Judge found that the purported consent terms were not read and recorded by the appellate authority. Nor intrinsic evidence of the purported consent terms was such that implicit reliance could be placed thereon. These observations of the learned Civil Judge cannot be said to be based on no evidence.

24. Learned District Judge did not find the aforesaid assessment sans objective material. However, learned District Judge was of the view that the omission to mutate the name of the Plaintiff No.1 to the record of rights of the suit lands since the year 2014 was on account of the failure on the part of Plaintiff No.1 to pay the unearned income (nazarana) to the State Government.

25. Whether this approach of the learned District Judge is justifiable ? At the outset, it is necessary to note that the appeal against the discretionary order is an appeal on principle. It is not open for the appellate Court to reassess the material and reevaluate the evidence and arrive at a different conclusion. The discretionary order is not susceptible for interference on the premise that a different view is possible on the very material assessed by the trial Court. The appellate Court is duty bound to interfere where the trial Court has exercised discretion in such a manner as to render the order perverse or against the settled position of law. Perversity in the order of the trial Court may arise on account of non-consideration of relevant material or

consideration of a circumstance which does not bear upon the exercise of discretion.

26. A profitable reference in this context can be made to a three Judge Bench decision of the Supreme Court in the case of Wander Ltd. and Anr. V/s. Antox India P. Ltd.² wherein the following observations have been made :

“14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In Liberation Sanssuch 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. After referring to these principles Gajendragadkar, J. in Printers (Mysore) Pvt. Ltd. V/s. Pothan

2 1990 (supp) SCC 727

Joseph³ :

“... These principles are well established, but as has been observed by Viscount Simon in Charles Oseption & Co. v. Johnston the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case.

The appellate judgment does not seem to defer to this principle.” (emphasis supplied)

27. In the case of Seema Arshad Zaheer and Ors. V/s. Municipal Corporation of Greater Mumbai and Ors.⁴ the Supreme Court expounded the principles which govern the interference by the appeal Court in the discretionary order passed by the trial Court. The observations in paragraph 32 are material, and, hence, extracted below:

“32. Where the lower court acts arbitrarily, capriciously or perversely in the exercise of its discretion, the appellate court will interfere. Exercise of discretion by granting a temporary injunction when there is 'no material', or refusing to grant a temporary injunction by ignoring the relevant documents produced, are instances of action which are termed as arbitrary, capricious or perverse. When we refer to acting on 'no material' (similar to 'no evidence'), we refer not only to cases where there are total dearth of material, but also to cases where there is no relevant material or where the material, taken as a whole, is not reasonably capable of

3 (1960) 3 SCR 713

4 (2006) 5 SCC 282

supporting the exercise of discretion. In this case, there was 'no material' to make out a prima facie case and therefore, the High Court in its appellate jurisdiction, was justified in interfering in the matter and vacating the temporary injunction granted by the trial court.” (emphasis supplied)

28. Another three Judge Bench of the Supreme Court in the case of Skyline Education Institute (India) Pvt. Ltd. V/s. S.L.Vaswani and Anr.⁵ after referring to the previous precedents, culled out the principles with regard to the interference with a discretionary order in the following words :

“22. The ratio of the abovenoted judgments in that once the Court of first instance exercises its discretion to grant or refuse to grant relief of temporary injunction and the said exercise of discretion is based upon objective consideration of the material placed before the Court and is supported by cogent reasons, the appellate court will be loath to interfere simply because on a de novo consideration of the matter it is possible for the appellate Court to form a different opinion on the issues of prima facie case, balance of convenience, irreparable injury and equity.” (emphasis supplied)”

29. Reverting to the facts of the case at hand, it is imperative to note that the learned District Judge did not profess to interfere with the impugned order on the premise that it is based on no evidence or the view taken by the learned Civil Judge is perverse. On the contrary, learned District Judge made

⁵ (2010) 2 SCC 142

an endeavour to downplay the absence of mutation in favour of the Plaintiff No.1 by observing that the terms of the settlement could not be given effect to as Plaintiff No.1 failed to pay nazrana amount.

30. This Court was anxious to consider whether there is a foundation in pleadings to sustain the aforesaid inference. A meaningful reading of the plaint as a whole, indicates that there is no whisper about the circumstances on account of which the terms of the settlement could not be given effect to in the record of rights of the suit land. In fact, the plaint is conspicuously silent about the delivery of possession of three acres of land by late Madhav to the Plaintiff No.1 in accordance with the said terms of settlement. Prima facie, it appears that the learned District Judge had offered a gratuitous explanation for the omission to mutate three acres land in the name of Plaintiff No.1 in the record of rights of the suit lands. That gives heft to the submission of Mr. Shah that the impugned order is based on surmises and conjunctures.

31. It would be contextually relevant to note that the plaint is conspicuously silent about the possession of and cultivation by the Plaintiffs of the three acre of land since seven years prior to the institution of the suit, the alleged acts of obstruction at the hands of Defendant No.1 to the peaceful possession and cultivation of the said land. The omission to make such averments, prima facie, cannot be said to be immaterial or inconsequential. The possession and cultivation of three acres of land since the year 2014, as claimed,

pursuant to the consent terms allegedly executed between the parties had such a critical salience that ordinarily the Plaintiff No.1 would not have missed to state the same. The learned Civil Judge was, thus, justified in returning a finding that the Plaintiff No.1 failed to establish his possession over the three acres of land.

32. The fact that the suit was instituted for partition and separate possession of the Plaintiff's share in the suit lands simplicitor, was justifiably taken into account by the trial Court. There was no whisper about the possession of the Plaintiffs over the said three acres of land and the obstruction thereto at the hands of Defendant No.1 and, consequently, no consequential relief, including that of injunction, was prayed for by the Plaintiffs.

33. In these circumstances, the learned District Judge could not have interfered with the exercise of discretion by the trial Court, sans very strong and cogent reasons. Apart from the gratuitous explanation sought to be offered by the learned District Judge, there is no other material which would justify an inference that the exercise of discretion by the trial Court was either perverse or not in consonance with the settled principles of law.

34. At the highest, the Plaintiffs are the co-owners of the suit land. The principle of community of interest and unity of possession comes into play. In such circumstance, in the absence of cogent evidence to show exclusive

possession of the Plaintiff No.1 over the three acres of land out of the suit lands, the learned District Judge could not have restrained the other co-owners from exercising the incidence of co-ownership over the entire suit land. On this count also, the impugned order deserves to be interfered with.

35. The conspectus of aforesaid consideration is that the learned District Judge committed a manifest error in interfering with the discretionary order passed by the trial Court by constructing a totally new case for the Plaintiffs. The Petition, therefore, deserves to be allowed.

36. Hence, the following order :

ORDER

- (i) The Writ Petition stands allowed.
- (ii) The impugned order dated 13 April 2022 passed by the learned District Judge, Satara, stands quashed and set aside.
- (iii) The order of rejection of the application for temporary injunction (Exh.23) passed by the Trial Court stands restored.
- (iv) In the circumstances, the parties shall bear their respective costs.
- (v) Rule made absolute in the aforesaid terms.

(N.J.JAMADAR, J.)