



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1792 OF 2025**

Atul Madhukar Rane ... Petitioner
versus
Ningayya Basayya Swami and Ors. ... Respondents

WITH
WRIT PETITION NO.1791 OF 2025

Atul Madhukar Rane ... Petitioner
versus
Ningayya Basayya Swami and Ors. ... Respondents

Mr. Hrishikesh S. Shinde, for Petitioner.
Mr. R.S.Alange, for Respondents.

CORAM: N.J.JAMADAR, J.

DATE : 10 FEBRUARY 2025

P.C.

1. Rule.
2. Rule made returnable forthwith. With the consent of the parties, heard finally.
3. By these Petitions, under Article 227 of the Constitution of India, the Petitioner assails the legality, propriety and correctness of two judgments and orders passed by the learned District Judge, Solapur in Misc. Civil Appeal Nos.7 of 2024 and 18 of 2024 preferred against the one and the same order dated 19 January 2024 passed by the trial Court in Regular Civil Suit No.896 of 2023 on an application for temporary injunction, thereby restraining the

Petitioner – Defendant No.3 from creating third party interest in the suit property till the final disposal of the suit.

4. The Petitioner – Defendant No.3, preferred Misc. Civil Appeal No.18 of 2024. By an order dated 23 September 2023, which is impugned in WP No.1791 of 2025, the learned District Judge dismissed the said appeal.

5. Misc. Civil Appeal No.7 of 2024 was preferred by the Respondent No.1 – Plaintiff as the trial Court had not allowed the prayer to restrain Defendant No.3 from excavating the suit land. By judgment and order dated 23 September 2024, the learned District Judge was persuaded to allow the said appeal holding, inter alia, that the trial Court having found a prima facie case, ought to have restrained Defendant No.3 from changing the nature of the suit property or otherwise damaging the suit property. Thus, the learned District Judge restrained the Petitioner – Defendant No.3 also from carrying out any excavation of minerals from the suit property till the final decision of the suit.

6. Being aggrieved, the Petitioner has assailed both the orders in these two separate petitions.

7. Mr. Shinde, learned Counsel for the Petitioner, would urge that the learned District Judge committed grave error in law in not appreciating the aspects of balance of convenience and irreparable injury. The Petitioner has been carrying out excavation of the minerals in the suit land pursuant to an order passed by the District Collector on 14 February 2023. The Petitioner

who has purchased the subject land under registered Sale Deed for a valuable consideration cannot be restrained from exercising incident of ownership.

8. Mr. Shinde further submitted that, though the Plaintiff had issued a notice raising objection to the sale of the suit property by Defendant Nos.1 and 2 on 10 December 2021, the suit came to be instituted in the month of August 2023. The aspect of delay in approaching the Court was also not correctly evaluated by both the Courts, urged Mr. Shinde. At any rate, according to Mr. Shinde, the Plaintiff could seek damages from the Defendant No.3 in the event the Plaintiff succeeds. However, to restrain Defendant No.3 from excavating the minerals would impinge upon his right to livelihood.

9. At the outset, it is necessary to note that both the courts below found a strong prima facie case in favour of the Plaintiff. Facts are hard. Defendant No.2 is the wife of the Plaintiff. Defendant No.1 is their son. The subject property was acquired by the Plaintiff under a registered Sale Deed in the year 2004 in the name of Defendant No.1, while the latter was barely two year old.

10. The Plaintiff suffered a stroke in the year 2021. The Plaintiff alleged, Defendant Nos.1 and 2 got the name of the Plaintiff deleted from the record of rights of the suit land. As the Plaintiff had an inkling that Defendant Nos.1 and 2 would alienate the suit land, a public notice was published on 7 December

2021 cautioning the general public from entering into any transaction with Defendant Nos.1 and 2. On 10 December 2021, Defendant No.3 published a public notice inviting objections to the transaction. On the very next day i.e. 11 December 2021, the Plaintiff addressed a notice to Defendant No.3 and raised objection to the proposed transaction of sale. Yet, Defendant No.3 went ahead and purchased the suit land under a registered Sale Deed dated 21 December 2021 from Defendant No.1. Defendant No.2 executed the instrument as a consenting party.

11. In the backdrop of these facts, the learned Civil Judge and the learned District Judge have correctly arrived at a finding that the Plaintiff has made out a strong prima facie case. The sequence of events leading to the acquisition of the suit land by the Defendant No.3, prima facie, indicates that the Defendant No.3 will have to surmount an insuperable impediment of demonstrating that he was a bonafide purchaser for value without notice. The stand of the Defendants appears to be that the suit property was purchased by Defendant No.2 out of her own income, and the name of the Plaintiff was mutated to the record of rights, being a natural guardian. That would be a matter to be adjudicated on the basis of evidence to be adduced at the trial.

12. The submission of Mr. Shinde that the order passed by the learned District Judge deprives the Defendant No.3 of his right of ownership and livelihood, does not commend itself. Permission for excavation was granted

in February 2023. Suit came to be instituted in August 2023. Moreover, the excavation of minerals from the suit land would cause irretrievable damage to the suit land.

13. In my considered view, the learned District Judge correctly exercised the jurisdiction to modify with the order passed by the learned Civil Judge. In the circumstances of the case, a mere injunction restraining Defendant No.3 from alienating the suit property had the propensity to cause irreparable loss to the Plaintiff. The claim of Defendant No.3 that he has been excavating minerals on the basis of the permission granted by the competent authority, in itself, is impregnated with a case that the suit property is being exploited to the point of losing its identity and character of agricultural land.

14. Mr. Alange, learned Counsel for the Respondents, invited attention of the Court to the contentions in the written statement of total denial of even the fact that Defendant No.3 was excavating the minerals from the suit land.

15. In this view of the matter, the learned District Judge was well within his rights in giving meaning and content to the order of injunction by restraining the Defendant No.3 from carrying out any excavation of minerals from the suit property or changing the nature of suit property in any manner apart from creating any third party interest in the suit property. In the totality of the circumstances, the issues of balance of convenience and irreparable loss firmly tilt in favour of the Plaintiff. If at all, the loss which can be computed in

terms of money, would be that of Defendant No.3 and not the Plaintiff.

16. For the foregoing reasons, the Writ Petitions deserve to be dismissed.

17. Hence, the following order :

ORDER

- (i) The Writ Petitions stand dismissed.
- (ii) Rule discharged.
- (iii) No costs.

(N.J.JAMADAR, J.)

18. At this stage, learned counsel for the Petitioner prayed for continuation of the interim stay.

19. Having considered the nature of the claim of the Defendant No.3 and the attendant circumstances, I am not inclined to accede to the prayer for continuation of stay to the operation of the order passed by the learned District Judge.

20. The oral application for stay, thus, stands rejected.

(N.J.JAMADAR, J.)