



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 15233 OF 2022

- | | |
|---|---|
| 1. Dnyandev Sonba Shelke | } |
| Age: 60 years, Occu: Agriculturist, | } |
| R/o Nimbodi, Post-Tambve, Taluka- | } |
| Khandala, District-Satara. | } |
| 2. Dattatrau Sonba Shelke | } |
| Age: 56 years; Occu: Agriculturist; | } |
| R/o. Nimbodi, Post-Tambve, | } |
| Taluka-Khandala, District-Satara | } |
| 3. Ramchandra Sonba Shelke | } |
| Age:40 years; Occu: Agriculturist; | } |
| R/o Nimbodi, Post-Tambve, | } |
| Taluka- Khandala, District-Satara | } |
| 4. Amol Manshing Shelke | } |
| Age: 35 years, Occu: Agriculturist; | } |
| R/o. Nimbodi, Post-Tambve, | } |
| Taluka- Khandala, District-Satara. | } |
| 5. Sulochana Manshing Shelke | } |
| Age: 60 years, Occu: Agriculturist; | } |
| R/o. Nimbodi, Post-Tambve, | } |
| Taluka- Khandala, District-Satara. | } |
| 6.Varsha Rama Kokare | } |
| Age: 33 years, Occu: Agriculturist; | } |
| R/o. Vidnni, Taluka- Phaltan, District- | } |
| Satara. | } |
| 7. Seems Dattatray Dhaigude | } |
| Age: 30 years, Occu: Agriculturist; | } |
| R/o. Khed Budruk, Post-Atali, | } |
| Taluka-Khandala, District-Satara. | } |
| 8.Putalabai Ramchandra Dhaigude | } |
| Age: 30 years, Occu: Agriculturist; | } |
| R/o Sukhed, Taluka-Khandala | } |
| District-Satara. | } |
| 9. Gulab Sonba Shelke | } |
| Age: 65 years, Occu: Agriculturist; | } |
| R/o. Nimbodi, Post-Tambve, | } |
| Taluka- Khandala, District-Satara. | } |

.....Petitioners
(Orig. plaintiffs)

v/s.

1. Ramesh Dagdu Shelke }
Age: 45 years, Occu: Agriculturist; }
R/o. Nimbodi, Post-Tambve, }
Taluka- Khandala, District-Satara. }
2. Rupali Dattaray Shelke }
Age: 65 years, Occu: Agriculturist; }
R/o. Nimbodi, Post-Tambve, }
Taluka- Khandala, District-Satara. }
3. Sunita Balasaheb Shelke }
Age: 46 years, Occu: Agriculturist; }
R/o. Nira-Wagaj, Post-Baramati, }
District-Pune. }
4. Kundalik Dagdu Shelke }
Age: 65 years, Occu: Agriculturist and }
Advocate; }
R/o. Nimbodi, Post-Tambve, }
Taluka- Khandala, District-Satara. }
5. Lata Kundalik Shelke }
Age: 58 years, Occu: Agriculturist; }
R/o. Nimbodi, Post-Tambve, }
Taluka- Khandala, District-Satara. }
6. Ashish Kundalik Shelke }
Age: 40 years, Occu: Agriculturist; }
R/o. Lonand, Taluka-Khandala, }
District-Satara. }
7. Padmini Ramesh Shelke }
Age: 43 years, Occu: Agriculturist; }
R/o. Nimbodi, Post-Tambve, }
Taluka- Khandala, District-Satara. }
8. Balaso Dagdu Shelke }
Age: 60 years, Occu: Agriculturist; }
R/o. Nimbodi, Post-Tambve, }
Taluka- Khandala, District-Satara. }
9. Nishant Balaso Shelke }
Age: 25 years, Occu: Agriculturist; }
R/o. Nimbodi, Post-Tambve, }
Taluka- Khandala, District-Satara. }

10. Nikhil Balaso Shelke }
Age: 29 years, Occu: Agriculturist; }
R/o. Nimbodi, Post-Tambve, }
Taluka- Khandala, District-Satara. }
11. Shankar Dagdu Shelke }
Age: 55 years, Occu: Agriculturist; }
R/o. Nimbodi, Post-Tambve, }
Taluka- Khandala, District-Satara. }
12. Jayshri Shankar Shelke }
Age: 50 years, Occu: Agriculturist; }
R/o. Nimbodi, Post-Tambve, }
Taluka- Khandala, District-Satara. }
13. Ajit Shankar Shelke }
Age: 30 years, Occu: Agriculturist and }
Advocate; }
R/o. Nimbodi, Post-Tambve, }
Taluka- Khandala, District-Satara. }
14. Kisan Vittal Shelke }
Age: 52 years, Occu: Agriculturist; }
R/o. Nimbodi, Post-Tambve, }
Taluka- Khandala, District-Satara. }
15. Pratiba Kisan Shelke }
Age: 45 years, Occu: Agriculturist; }
R/o. Nimbodi, Post-Tambve, }
Taluka- Khandala, District-Satara. }
16. Abhijit Kisan Shelke }
Age: 25 years, Occu: Agriculturist; }
R/o. Nimbodi, Post-Tambve, }
Taluka- Khandala, District-Satara. }
17. Ketan Kisan Shelke }
Age: 30 years, Occu: Agriculturist; }
R/o. Nimbodi, Post-Tambve, }
Taluka- Khandala, District-Satara. }
18. Arvind Ganpat Shelke }
Age: 56 years, Occu: Agriculturist; }
R/o. Nimbodi, Post-Tambve, }
Taluka- Khandala, District-Satara. }
19. Ratan Arvind Shelke }
Age: 50 years, Occu: Agriculturist; }
R/o. Nimbodi, Post-Tambve, }
Taluka- Khandala, District-Satara. }

20. Nitin Arvind Shelke	}	
Age: 35 years, Occu: Agriculturist;	}	
R/o. Nimbodi, Post-Tambve,	}	
Taluka- Khandala, District-Satara.	}	
21. Dattaray Ganpat Shelke	}	
Age: 52 years, Occu: Agriculturist;	}	
R/o. Nimbodi, Post-Tambve,	}	
Taluka- Khandala, District-Satara.	}	
22. Pravin @ Mohan Ganpat Shelke	}	
Age: 50 years, Occu: Agriculturist;	}	
R/o. Nimbodi, Post-Tambve,	}	
Taluka- Khandala, District-Satara.	}	
23. Digvijay Ramesh Shelke	}	
Age: 19 years, Occu: Agriculturist;	}	
R/o. Nimbodi, Post-Tambve,	}	
Taluka- Khandala, District-Satara.	}	
24. Prasad Ramesh Shelke	}	
Age: 21 years, Occu: Agriculturist;	}	Respondents
R/o. Nimbodi, Post-Tambve,	}	(Orig. Defendants)
Taluka- Khandala, District-Satara.	}	

Mr. R.V. Pai, Senior Advocate a/w Mr. Akshay Pai I.by Ms. Bina R. Pai, for the petitioners.

Mr. P.S. Dani, Senior Advocate with P.B. Gujar, for the respondent nos. 4 to 6.

Mr. Dilip Bodake a/w Mr. Shraddha Pawar, for the respondent nos. 1 to 3.

CORAM : N.J. JAMADAR, J.

DATED : 12 JUNE 2025.

JUDGMENT :

1. Rule. Rule made returnable forthwith and, with the consent of the counsel for the parties, heard finally.

2. By this petition under Article 227 of the Constitution of India, the petitioners take exception to a judgment and order dated 18th November 2022 passed by the learned District Judge, Satara in Miscellaneous Civil

Appeal No. 57 of 2022 whereby the learned District Judge was persuaded to allow the appeal by setting aside an order dated 20th January 2022 passed by the learned Civil Judge, Khandala on an application for temporary injunction (Exhibit-5) in Regular Civil Suit No. 178 of 2021 and vacate the injunction granted by the Trial Court.

3. For the sake of convenience and clarity, the parties are hereinafter referred to in the capacity in which they are arrayed before the Trial Court.

4. An agricultural land admeasuring 2 H. 21 R, bearing Gat No. 40 (new Gat No. 40/1 and 40/2) situated at Mauje Nimbodi, Tal-Khandala, District-Satara (the suit land), is the ancestral property of the plaintiffs. Sonba was the father of the plaintiff nos. 1, 2, 3, 8 and 9. The plaintiff nos. 4 to 7 are the wife and children of Manshing, the deceased brother of plaintiff nos. 1 to 3, 8 and 9.

5. The Plaintiff Nos. 1 to 3, 9 and deceased Mansing had raised a loan from the Land Development Bank. In the year 1994, the plaintiffs were in emergent need of money to repay the said loan as the Land Development Bank was threatening to attach the properties of the Plaintiffs.

6. Gulab (P-9) was then working with Kundalik Shelke (d-4), who is also a practising Advocate. Defendant No.4 allegedly offered to provide financial assistance to the plaintiffs to repay the loan upon execution of certain documents by way of security.

7. On 14th November 1994, the defendant no. 4 took the plaintiff nos. 2 , 9 and the deceased Sonba to Phaltan and made them execute certain

documents by misrepresenting that those documents were to secure the loan. Believing the representations of defendant no. 4, the plaintiff nos. 2, 9 and deceased Sonba, who were illiterate, executed the documents in favour of Defendant Nos.1 to 3 under the belief that the said documents were in the nature of a mortgage. The contents of the said documents were not read over and explained to the accused before they came to be executed and registered. The defendant no. 4 deposited the loan amount with the Land Development Bank.

8. The Plaintiffs assert, the Defendant Nos.1 to 3, taking undue advantage of the said document, instituted a Suit, being Special Suit No. 466 of 1997, for specific performance of the contract contained in said document dated 14th November 1994, which was fraudulently got executed from the Plaintiff nos. 2, 9 and deceased Sonba. Upon service of summons, the Plaintiffs approached the defendant no. 4. A settlement was arrived at between the parties. A sum of Rs. 40,000/- was paid to defendant No. 4. The later had assured to ensure the withdrawal of the said suit.

9. The Plaintiffs averred the defendant no. 4 did not ensure the withdrawal of the suit, as agreed. When the notice of execution in Execution Proceeding i.e.R.D No. 134 of 2006 was served on Plaintiff no. 5, the Plaintiffs realised that the defendant nos. 1 to 4, despite the settlement and receipt of Rs. 40,000/-, prosecuted the suit and obtained an ex-parte decree on 30th April 2005.

10. The Plaintiffs filed an application under Section 47 of the Code of

Civil Procedure, 1908 ('the Code') in the said execution proceeding. However, while the matter was sub-judice before the Executing Court, the defendant nos. 1 to 4 started to cause obstruction to the peaceful possession and cultivation of the suit land by the plaintiffs, on the strength of the aforesaid decree. In fact, under the purported agreement for sale dated 14th November 1994, the possession of the suit land was never delivered to the defendant nos. 1 to 3. Nor at any time thereafter, the possession of the suit land was delivered to the Defendant Nos.1 to 3. The Plaintiffs have all along been in possession and cultivation of the suit land. As the Defendant Nos.1 to 3 tried to forcibly establish possession over the suit land, the plaintiffs were constrained to lodge reports with police. The Defendants also tried to disturb the possession of the plaintiffs when they started work to dig a well in the suit land. Hence, the suit for perpetual injunction to restrain defendants from causing obstruction to the possession and cultivation of the suit land by the Plaintiffs.

11. In the said suit, the Plaintiffs filed an application for temporary injunction. By an order dated 20th January 2022, the learned Civil Judge was persuaded to allow the application observing, inter alia, that prima facie the Plaintiffs appeared to be in possession of the suit land. The learned Civil Judge took into account the fact that in the purported agreement for sale dated 18th November 1994, it was categorically mentioned that the possession of the suit land would be delivered at the time of execution of the said sale deed; the possession receipt of even date which was pressed

into service on behalf of the defendant, was unregistered and, therefore, did not command precedence; the record of right of the suit land indicated that the name of the Defendant No.9 was mutated in the holders and cultivators column, and, conversely, there was no document to show that the defendants were in possession of the suit land.

12. Being aggrieved, the Defendants preferred an appeal before the learned District Judge. By the impugned order, the learned District Judge was persuaded to interfere with the exercise of discretion by the Trial Court observing, inter alia, that the findings recorded by the Trial Court were perverse and the Trial Court committed an error in appreciating the material on record.

13. The learned District Judge was of the view that the plaintiff had admitted the execution of the purported agreement for sale dated 18th November 1994; under the said agreement almost entire consideration of Rs. 1,89,000/-, out of the total consideration of Rs. 1,90,000/-, was accepted and acknowledged. The possession receipt records that the possession was delivered to the defendant nos. 1 to 3 by passing a separate receipt as the plaintiff could not have parted with the possession of the suit land without obtaining permission of the competent authority to alienate the suit land. And the said receipt could be lawfully taken into account for the collateral purpose of ascertaining factum and nature of possession. Thus, holding that the defendant nos. 1 to 3 were in possession of the suit land, the learned District Judge was persuaded to set

aside the order of injunction.

14. Being aggrieved, the plaintiffs have invoked the writ jurisdiction.

15. I have heard Mr. Pai, learned Senior Advocate for the Petitioners, Mr. Dilip Bodake, learned counsel for the Respondent Nos. 1 to 3 and Mr. Dani, learned Senior Advocate for Respondent Nos. 4 to 6, at some length. With the assistance of learned counsel for the parties, I have perused the material on record, including the pleadings and documents tendered before the Trial Court.

16. Mr. Pai, learned Senior Advocate for the Petitioners, submitted that the impugned order suffers from the vice of clear transgression of the jurisdictional limits in an appeal against an interlocutory order. Learned District Judge was clearly in error in interfering with the well-reasoned order passed by the trial Court in exercise of discretionary jurisdiction. The appeal against the discretionary order is essentially an appeal on principle and it is not open for the appellate Court to reevaluate the material and arrive at a different conclusion on the basis of same material. It is legally impermissible for the appellate Court to substitute its own view for the view taken by the Court of first instance in passing the discretionary order, unless the order appealed against is clearly perverse or against the settled principles of law.

17. Mr. Pai strenuously submitted that, by no stretch of imagination, can it be urged that the order passed by the trial Court granting injunction is perverse. Learned Civil Judge has ascribed justifiable reasons to hold that,

despite execution of the possession receipt, the Plaintiffs had been in continuous, peaceful and uninterrupted possession and cultivation of the suit land. Such a prima facie finding of fact was not open for interference in exercise of limited appellate jurisdiction. To bolster up these submissions, Mr. Pai placed reliance on the judgments of the Supreme Court in the cases of Wander Ltd. and Anr. V/s. Antox India P. Ltd.¹ and Shyam Sel and Power Ltd. and Anr. V/s. Shyam Steel Industries Ltd.².

18. Mr. Pai further submitted that in the face of a clear recital in the registered Agreement for Sale that the possession of the suit land would be delivered at the time of the execution of the Sale Deed, the unregistered possession receipt is of no evidentiary value. To lend support to this submission, Mr. Pai placed reliance on the judgment of the Division Bench of this Court in the case of M/s. Gold Touch Real Estate Pvt. Ltd. V/s. Suresh s/o Manoharlal Suri and Ors.³

19. Per contra, Mr. Bodake, learned Counsel for Respondent No.1 to 3, would urge that the learned District Judge was wholly justified in interfering with the order passed by the trial Court, as it was clearly perverse. Perversity in the order arose from the non-consideration of the vital documents which clearly indicated that the Defendants were in possession of the suit land pursuant to the registered Agreement for Sale and the possession receipt.

1 1990 (Supp) SCC 727

2 (2023) 1 SCC 634

3 2016(6) ALL MR 806

20. Mr. Bodake laid emphasis on the fact that the learned Civil Judge, despite noting that the Plaintiffs had placed on record false and bogus receipt of the sugar factory to bolster up the case of possession over the suit land and had also tried to bank upon the application for sanction of loan which was subsequently withdrawn, downplayed the said gross conduct on the part of the Plaintiffs. It was urged that a party who approaches the Court with unclean hands and attempts to play fraud on the Court and the opponent, does not deserve any equitable relief. Thus, the learned District Judge rightly corrected the error in the exercise of discretion by the trial Court.

21. Mr. Bodake took the Court through the documents to show that there were notices addressed on behalf of Gulab (P-9) to the authorities to the effect that the registered Agreement for Sale of the suit land was executed and the possession was also delivered to Defendant Nos.1 to 3. In such circumstances, the issue of possession could not have been answered in favour of the Plaintiffs on the basis of the record of rights only as in view of the prohibition for alienation of the suit land, without obtaining the permission of the competent authority, the names of the Defendants could not have been reflected in the record of rights and that was the precise reason for which a separate possession receipt was executed on the very day of the execution of the Agreement for Sale.

22. Mr. Bodake also laid emphasis on the fact that except a sum of Rs.1,000/-, the entire consideration of Rs.1,79,000/- was paid by Defendant

Nos.1 to 3 and acknowledged by Plaintiff No.2 and 9 and deceased Sonaba. Therefore, the impugned order does not warrant any interference in exercise of writ jurisdiction.

23. Mr. Dani, learned Senior Advocate for Respondent Nos.4 to 6 supplemented the submissions of Mr. Bodake. Mr. Dani would further urge that the Plaintiffs could not have been granted any interim relief in a suit for injunction simplicitor in the face of the registered Agreement for Sale and the possession receipt without seeking any declaration with regard to those documents. Moreover, since the very contentions which formed the foundation of the plaint were raised in an application filed by the Plaintiffs in the execution proceedings under Section 47 of the Code, the Plaintiffs could not have instituted a separate suit on the self-same grounds. Thus, the suit was barred by the provisions contained in Section 47 of the Code.

24. Mr. Pai joined the issue by canvassing a submission that the alleged notices addressed on behalf of Gulab (P-9) do not advance the cause of the submission on behalf of the Plaintiffs as the said notices were addressed by the very same Advocate, who had addressed notices on behalf of the Defendant Nos.1 to 3. Mr. Pai would further urge that the possession of a portion of the suit properties was taken by the Government, vide Mutation Entry No.1176, and the compensation was paid to the Plaintiffs. This mutation entry substantiates the claim of the Plaintiffs that they had been in possession of the suit land all along.

25. I have given careful consideration to the submissions canvassed

across the bar. At the outset, it is necessary to note the limits of the jurisdiction of the appellate Court in an appeal against the interlocutory order. The legal position is well recognized. Ordinarily, the appeal Court is not expected to interfere with the exercise of discretion in the matter of grant of injunction by the trial Court and substitute its own discretion for the same, except where it can be demonstrated that the discretion has been exercised arbitrarily or perversely, or the impugned order is contrary to the settled principles of law. An arbitrariness in the exercise of discretion or perversity in the order passed by the trial Court can arise where the injunction has been granted sans material or the trial court has declined to grant temporary injunction, despite existence of justifiable material.

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. (supra), on which reliance was placed by Mr.Pai, 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 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. After referring to these principles Gajendragadkar, J. in Printers (Mysore) Pvt. Ltd. V/s. Pothan Joseph⁴ :

“... 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 Shyam Sel and Power Ltd. and Anr. V/s. Shyam Steel Industries Ltd. (supra), the Supreme Court observed that the aforesaid judgment in the case of Wander Ltd. (Supra), has been guiding the appellate courts in the country for decades while exercising their appellate jurisdiction considering the correctness of the discretion and jurisdiction exercised by the trial courts for grant or refusal of interlocutory injunctions.

4 (1960) 3 SCR 713

28. In the case of Seema Arshad Zaheer and Ors. V/s. Municipal Corporation of Greater Mumbai and Ors.⁵ 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 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)

29. 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.⁶ after referring to the previous precedents, culled out the principles in the

5 (2006) 5 SCC 282

6 (2010) 2 SCC 142

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)

30. On the aforesaid anvil, reverting to the facts of the case, the registered Agreement for Sale records that the Plaintiff Nos.2 and 9, and deceased Sonaba agreed to sell the suit land to Defendant Nos.1 to 3 for a consideration of Rs.1,90,000/-. Out of the said amount, payment of Rs.1,89,000/- was acknowledged by the vendors. Since the vendors were holding the land in excess of 8 Acres, it was necessary to obtain permission of the Rehabilitation Officer to sell the suit land. The Sale Deed would, thus, be executed within three months of the notice to be given by the vendors to the purchasers after obtaining such permission from the competent authority. The possession of the suit land would be delivered at the time of execution of the Sale Deed. The possession receipt of even date, inter alia, records that since the sale cannot be effected without obtaining the permission of the competent authority, the possession of the

suit land was delivered by executing a separate possession receipt.

31. The controversy between the parties, thus, revolves around the factum of delivery of possession under the said possession receipt in teeth of the recital in the registered Agreement for Sale that the possession would be delivered at the time of the execution of the Sale Deed.

32. The matter cannot be approached from the perspective as to whether the unregistered possession receipt commands value over the recital in the registered Agreement for Sale. The entire gamut of the circumstances was required to be kept in view. First, the case pleaded by the Plaintiffs. The Plaintiffs feigned ignorance not only about the contents but also the character of the registered instrument, executed by them. The Plaintiffs averred, they were made to believe that they were executing the instrument in the nature of a mortgage to secure the loan, which they claimed they had availed from Defendant No.4. Upon the suit being instituted by Defendant Nos.1 to 3, the Plaintiffs claimed to have approached Defendant No.4 and repaid the amount of Rs.40,000/- to Defendant No.4, who had assured to ensure that the suit would be withdrawn.

33. Whether the aforesaid claim of the Plaintiffs, prima facie, appeals to human credulity ? Even if the first part of the Plaintiffs' claim that they were unaware of the character and contents of the document is taken at par, yet, the Plaintiffs would have to surmount an impediment in establishing the second part of their claim, namely, despite becoming aware of the nature of

the suit claim, they paid sum of Rs.40,000/- and remained contained with an assurance of the Defendant No.4 that he would ensure that the suit is withdrawn.

34. It would be contextually relevant to note that the Agreement for Sale was executed in favour of Defendant Nos.1 to 3 and the suit was instituted by Defendant Nos.1 to 3. On the contrary, the Plaintiffs claimed to have paid the amount of Rs.40,000/- to Defendant No.4 and settled the dispute with him.

35. The learned District Judge correctly appreciated the nature of the aforesaid claim of the Plaintiffs to prima facie doubt the reliability of the Plaintiffs' claim. The aforesaid nature of the Plaintiffs' claim significantly bears upon the assertions as regards the possession of the suit land. The justification for execution of the separate possession receipt is, prima facie, found in the very recital in the Agreement for Sale that the sale could not be effected without obtaining the prior permission of the competent authority. The factors like acknowledgment of receipt of entire consideration but Rs.1,000/- and the execution of the possession receipt simultaneous with the registered Agreement for Sale were required to be considered in conjunction with the said apparent impediment in execution of the Agreement for Sale with a recital that the possession was delivered to the purchaser under the said Agreement for Sale.

36. The fact that the name of Gulab (P9) continued to be mutated to the record of rights of suit land, and, conversely, the names of defendant Nos.1

to 3 were nowhere showed in the cultivators column, principally weighed with the learned Civil Judge in returning a finding that the plaintiffs were, and defendant Nos.1 to 3 were not, in the cultivation of the suit land.

37. The learned Civil Judge did not attach much weight to the fact that an endeavour was made by the plaintiffs to bolster up their case of possession by relying upon a sugarcane supply receipt, which was shown to be false and bogus. The learned Civil Judge, in terms, observed that though the receipt was false or bogus, it did not detract materially from the plaintiffs case as the receipt was in respect of sugarcane cultivated in only 20 R land and the total area of the land was 2 H. 21 R., and the defendants could resort to remedies against the plaintiffs for filing such false or bogus receipt. Likewise, the fact that an abortive attempt was made by the plaintiffs to bank upon the sanction of loan against the security of the suit land to substantiate their claim of possession, and, subsequently, the said proposal was withdrawn, was not given due weight by the learned Civil Judge.

38. The aforesaid approach of the learned Civil Judge was not in consonance with the settled principles of law. The learned Civil Judge lost sight of the fact that the conduct of a party, who approaches the Court for an equitable relief, is of as much significance as the merits of the claim, in exercising the discretion to grant interim relief. The fact that the plaintiffs had filed a purportedly false or bogus receipt to bolster up the case for possession ought to have entailed the consequences known to law. On the

one hand, this very conduct dis-entitled the plaintiffs from an equitable relief. On the other hand, the said conduct amounted to an endeavour to practice fraud on the Court and the opponent. The learned Civil Judge, thus, could not have brushed aside such flagrant conduct on the part of the plaintiffs by observing that the defendants could resort to appropriate action against the Plaintiffs.

39. The legal position is well neigh settled. A useful reference in this context can be made to the decision of the Supreme Court in the case of Gujarat Bottling Co. Ltd. and others vs. Coca Cola Co. and others⁷, wherein the Supreme Court enunciated that under Order XXXIX of the Code of Civil Procedure, 1908, jurisdiction of the Court to interfere with an order of interlocutory or temporary injunction is purely equitable and, therefore, the Court on being approached, will, apart from other considerations, also look to the conduct of the party invoking the jurisdiction of the Court, and may refuse to interfere with unless his conduct was free from blame.

40. In an off-quoted decision of the Supreme Court in the case of S. P. Chengalvaraya Naidu (Dead) by LRs. vs. Jagnnath (Dead) by LRs. and others⁸ the Supreme Court had strongly deprecated and admonished suppression and trickery in the judicial proceedings by observing that, a litigant, who approaches the Court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be

⁷ (1995) 5 Supreme Court Cases 545.

⁸ (1994) 1 SCC 1.

guilty of playing fraud on the Court as well as on the opposite party.

41. In the case of Rajmas Foundation vs. Union of India⁹, the Supreme Court, after adverting to judicial precedents, held that if a litigant does not come to the Court with clean hands, he is not entitled to be heard, and indeed such person is not entitled to any relief from any judicial forum. The observations of the Supreme Court in paragraph 21 are instructive and, hence, extracted below :

“21. The principle that a person who does not come to the Court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in others courts and judicial forums. The object underlying the principle is that every Court is not only entitled but is duty bound to protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by resorting to falsehood or by making misstatement or by suppressing facts which have bearing on adjudication of the issue(s) arising in the case.”

(emphasis supplied)

42. It is imperative to note that the case is hand is not that of suppression of facts but *prima facie* positive act of falsehood bordering on fraud in placing reliance on a document, which turned out to be false, to substantiate the case of possession. *Prima facie* the Plaintiffs lacked commitment to fairness in the Court proceedings in a huge measure. To grant relief to such a party by gratuitously advising the opponent to work out

⁹ (2010) 14 SCC 38.

his remedies for the alleged falsehood, would amount to putting a premium on falsehood and sharp practice. The learned Civil Judge was, thus, in error in adopting the approach which he was persuaded to take. By their own conduct, the plaintiffs had dis-entitled themselves from any equitable relief.

43. Though Mr. Pai made an earnest endeavour to question the veracity of the notices purportedly addressed on behalf of Gulab (P9) and the statements made on behalf of the Defendants before the authorities that they were in possession and cultivation of the suit land, in my view, the said aspect is relegated to a subsidiary position once it is *prima facie* demonstrated that the plaintiffs had tried to obtain an injunctive relief by relying upon a purported false document. The veracity of the allegation of the plaintiffs with regard to the documents banked upon by the defendants would be a matter for adjudication at the trial.

44. The absence of the name of defendant Nos.1 to 3 in the cultivators column of the suit land deserves to be appreciated in the light of, by and large, admitted position that the sale could not have been effected without obtaining the permission of the competent authority, as is evident from the very recital in the agreement for sale. If viewed in the light of the concomitant circumstances, adverted to by the learned District Judge, namely, *prima facie* unsustainability of the case set up by the plaintiffs; the stoic silence of the plaintiffs, even after becoming aware of the institution of the suit by defendant Nos.1 to 3; the acknowledgment of entire consideration, except Rs.1,000/-, under the registered agreement for sale

and the contemporaneous execution of the possession receipt, apparently to overcome the restraint on the sale without the permission of the competent authority, the fact that the names of defendant Nos.1 to 3 were not shown in the cultivator's column of record of rights of the suit land does not detract materially from the defendants claim of possession.

45. In the totality of circumstances, the learned District Judge was fully justified in interfering with the order of injunction as the learned Civil Judge had recorded findings which appeared to be against the weight of the material on record and exercised the discretion contrary to the settled principles of law. Thus, the principal submission of Mr. Pai that the learned District Judge could not have interfered with the discretionary order, in exercise of limited appellate jurisdiction, does not merit acceptance.

46. The upshot of the aforesaid consideration is that no interference is warranted in the impugned order whereby the learned District Judge justifiably corrected the error which the learned Civil Judge had committed in the exercise of discretion.

47. The Writ Petition, thus, deserves to be dismissed.

48. Hence, the following order :

: O R D E R :

- (i) The Writ Petition stands dismissed.
- (ii) Rule discharged.
- (iii) No costs.

(N.J. JAMADAR, J)

49. Mr. Pai mentioned the matter at 5.00 pm.
50. The matter was mentioned at 3.00 pm. also.
51. Mr. Pai submits that he has informed Mr. Bodake, the learned Counsel for respondent Nos.1 to 3, that the petitioner would be seeking continuation of the *status quo*, which has been in operation during the pendency of this petition.
52. Mr. Bodake did not appear. None appears for Respondent Nos.1 to 3.
53. Since the *status quo* has been in operation during the pendency of this petition, it would be expedient in the interest of justice that the said order is continued for a reasonable period.
54. Thus, the *status quo* order shall continue to operate for a period of six weeks from today.

(N.J. JAMADAR, J)