

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

WRIT PETITION NO. 1869 OF 2024

Shalanbai Shankarrao Dhumal

...Petitioner

Versus

1. Vijay Ramchandra Dhumal
2. Manikbai Ramchandra Dhumal
3. Ratnaprabha Gorakh Shinde
4. Sangeeta Shantaram Bhosale

...Respondents

Mr. R. D. Soni, a/w Sachin Khandagale, i/b V. R. Kasle, for
the Petitioner.

Mr. Aseem Naphade, a/w Samiksha Mane and Deepanjali
Mishra, i/b Heramb Kadam, for the Respondents.

CORAM: N. J. JAMADAR, J.

RESERVED ON : 23rd JANUARY, 2025

PRONOUNCED ON: 17th APRIL, 2025

JUDGMENT:-

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

2. The petitioner – plaintiff takes exception to a judgment and order passed by the learned District Judge, Pune, on 9th October, 2023 in Misc. Civil Appeal No.164 of 2021, whereby the appeal preferred by the plaintiff came to be dismissed affirming an order dated 19th July, 2021 passed by the learned Civil Judge in RCS No.145/2021 thereby rejecting the application for temporary injunction (Exhibit-5) preferred by the plaintiff.

3. Shorn of superfluities, the background facts leading to this petition can be stated as under:

3.1 Late Haribhai Ganpat Bhoite was the holder of agricultural land bearing Gat No.680 admeasuring 1 H. 31 R. situated at Veer, Taluka Purandar, District Pune ("the suit land"). Late Ramchandra Dhumal, the husband of defendant No.2 and father of defendant Nos.1, 3 and 4 was a tenant therein. Pursuant to the orders passed by the Tribunal under the Maharashtra Tenancy and Agricultural Lands Act, 1948 ("the MT&AL Act, 1948"), the purchase price of the suit land was fixed and under a registered Sale Deed dated 11th August, 1978 late Ramchandra purchased the suit land.

3.2 Ramchandra Dhumal passed away on 12th March, 1979. He was survived by the defendants and late Muktabai, the co-wife, Manikbai (D2). Late Muktabai and Manikbai, defendant No.2, sold the suit land to the plaintiff under a registered Sale Deed dated 11th February, 1982 for a valuable consideration. The plaintiff was also put in possession of the suit land.

3.3 The defendants, thus, had no right, title and interest in the suit land. Yet, the defendants on the basis of a shallow entry of the name of late Ranchandra in the record of rights of the suit land, filed an application to mutate their names in the

record of rights of the suit land. The revenue officer unlawfully entered the names of the defendants vide ME No.7792. The plaintiff challenged the certification of ME No.7792 by preferring an appeal before the Deputy Collector. The defendants by taking undue advantage of the said shallow entry, started to cause obstruction to the possession and cultivation of the plaintiff and made known their intent to create third party rights in the suit land. Hence, the suit for perpetual injunction.

3.4 In the said suit, the plaintiff sought temporary injunction. By an order dated 19th July, 2021, the learned Civil Judge was persuaded to reject the application for temporary injunction observing *inter alia* that when the Sale Deed was executed by late Muktabai and Mankabai (D2), the wives of late Ramchandra, the defendant Nos.1, 3 and 4 appeared to be minor. Thus, the legality of the Sale Deed dated 11th February, 1982 in favour of the plaintiff was questionable. On the aspect of the factum of possession, the learned Civil Judge was of the view that the defendants could demonstrate *prima facie* possession over the suit property on the basis of the assessment list issued by the village panchayat and the electricity connection supplied to the defendants at the suit property. The

elements of balance of convenience and irreparable injury were found against the plaintiff.

3.5 Being aggrieved, the plaintiff preferred appeal before the District Court.

3.6 By the impugned judgment and order, the learned District Judge, declined to interfere with the discretionary order passed by the trial court. It was, *inter alia*, observed that in view of the fact that the sale deed was executed without obtaining the permission of the Court, while the defendant Nos.1 to 3 and 4 appeared to be minor, the learned Civil Judge took a rational and reasonable view of the matter. The learned District Judge also found no error on the reliance placed by the trial court on the affidavits tendered by the adjoining landholders. Thus, the assertion of the plaintiff that she had been in possession of the suit land since the year 1980 was negated.

4. Being further aggrieved, the plaintiff has invoked the writ jurisdiction.

5. On 16th February, 2024, while issuing notices to the respondents this Court granted ad-interim relief thereby restraining the defendants from creating third party rights in the suit land in any manner and/or disturbing and/or

obstructing the peaceful possession and/or cultivation of the petitioner over the suit land.

6. Affidavits-in-reply and rejoinder have been filed.

7. I have heard Mr. Soni, the learned Counsel for the petitioner, and Mr. Naphade, the learned Counsel for the respondent Nos.1 to 4, at some length. The learned Counsel took the Court through the pleadings and the material on record.

8. At the outset, it is necessary to note that both the plaintiff and defendants had sought leave to tender the additional evidence before the Appellate Court. However, by an order dated 28th August, 2023, the application preferred by the parties to produce additional evidence came to be rejected. Thus, alongwith the pleadings, the parties have tendered the documents for the perusal of this Court.

9. Mr. Soni, the learned Counsel for the petitioner, strenuously submitted that the courts below have determined the issue of possession and entitlement for temporary injunction in a mechanical manner. Even if the case of defendant Nos.1, 3 and 4 that they were minors at the time of the execution of the said Sale Deed is taken at par, yet the said alienation by the natural guardian would be voidable under

Section 8(3) of the Hindu Minority and Guardianship Act, 1956 (“the Act, 1956”). The said voidable contract, was never questioned, much less avoided for over 40 years. The trial court and the learned District Judge, ought to have kept in view the fact that the remedy to seek a declaration that the said sale deed is void, was barred by the provisions of the Limitation Act.

10. Mr. Soni would further urge that the trial court as well as the learned District Judge committed an error in law in placing reliance on the affidavits of the adjoining landholders, who have since retracted those affidavits. Moreover, the name of the plaintiff came to be mutated to the holders as well as cultivators column of the suit land since the year 1988. Yet, at no point of time, defendant Nos.1 to 4 have challenged the said mutation entry. In these circumstances, according to Mr. Soni, impugned orders deserve to be quashed and set aside.

11. Mr. Naphade, the learned Counsel for respondent Nos.1 to 4, would, however, urge that since the courts below have recorded concurrent findings of facts as regards the validity of the instrument as well as the factum of possession, this Court may not interfere with the impugned orders in exercise of the supervisory jurisdiction. Mr. Naphade would urge that the jurisdiction of this Court under Article 227 of the Constitution

of India is very limited. This Court cannot substitute its own view for the view taken by the courts below. Nor the mere errors of law are open for correction.

12. To buttress the aforesaid submission, Mr. Naphade placed reliance on the judgments of the Supreme Court in the cases of *Mohd. Yunus vs. Mohd. Mustaqim and others*¹ and *Trimbak Gangadhar Telang and another vs. Ramchandra Ganesh Bhide and others*².

13. Mr. Naphade would further urge that the courts below have recorded a positive finding that the plaintiff was not in possession and cultivation of the suit land on the basis of objective material. Such concurrent *prima facie* findings of facts are not open for interference in the writ jurisdiction. Mr. Naphade laid emphasis on the fact that the trial court had placed reliance on the affidavits of two adjoining landholders. The fact that subsequently, those adjoining landholders filed further affidavits disowning the earlier affidavits is of no significance, as, at this stage, the Court is required to take a *prima facie* view of the matter. The documents relied upon by the defendants, according to Mr. Naphade, clearly demonstrate that the defendants have been in possession of the suit land.

1 (1983) 4 Supreme Court Cases 566.

2 (1977) 2 Supreme Court Cases 437.

14. As regards the validity of the sale deed executed by Mankabai (D2) and late Muktabai, Mr. Naphade would urge that to the extent the instrument was executed by late Muktabai, who was the stepmother of defendant Nos.1, 3 and 4, the instrument was clearly void. The execution of the instrument by Mankabai (D2) was also fraught with infirmities. Firstly, though Mankabai (D2) was a natural guardian of defendant Nos.1, 3 and 4, she was not entitled to sell the suit land without the previous permission of the Court. In view of the provisions contained in sub-section (3) of Section 8 of the Act, 1956, disposal of the property by a natural guardian in contravention of sub-section (1) or sub-section (2) thereof is voidable at the instance of the minor or any person claiming under him.

15. Mr. Naphade made a strenuous effort to draw home the point that erstwhile minors were not necessarily required to institute a suit seeking a declaration qua the validity of the instruments executed by their natural guardian. Institution of a suit seeking such declaration was not peremptory. The minor could repudiate the contract made on his behalf by the natural guardian by acts or conduct. Even by holding possession of the suit land, the minor can show the repudiation of the contract executed by the natural guardian.

16. In order to lend support to the aforesaid submissions, Mr. Naphade placed reliance on the judgments of the Kerala High Court in the cases of *Iruppakkatt Veettil Viswanathan's wife Santha vs. Deceased Kandan's L.Rs. Wife Cherukutty and others*³ and *Murugan and others vs. Kesava Gounder (dead) through LRs. and others*⁴, a decision of Jharkhand High Court in the case of *Durga Sahu and others vs. Deo Chand Sahu and others*⁵, a decision of Andhra Pradesh High Court in the case of *Ogirala Gouri Sankar and anr. vs. Siri Konda Veer Sameera Kumar Dev and anr.*⁶ and a decision of Orissa High Court in the case of *Brundaban Mohanty vs. Abakash Rout and others*⁷. In the latter case, after adverting to the previous pronouncements, it was enunciated that a minor can avoid a contract on attaining majority and the mode of avoidance may be by a unilateral act or conduct like transferring the property to somebody else or by remaining in possession of the property.

17. To start with, undoubtedly, the supervisory jurisdiction of the High Court under Article 227 of the Constitution of India is limited. Supervisory jurisdiction has been conferred on the

3 AIR 1972 Kerala 71.

4 (2019) 20 Supreme Court Cases 633.

5 2004 SCC OnLine Jhar 155.

6 1996 SCC OnLine AP 607.

7 1992 SCC OnLine Ori 232.

High Court to ensure that the Courts and Tribunals act within the bounds of their authority. In exercise of the writ jurisdiction under Article 227 of the Constitution of India, the High Court may not be justified in re-appreciating the evidence and substituting its view for the views of the courts below. Nor the High Court can interfere with the discretionary order passed by the Courts on the premise that two views are possible on the facts of the given case. The supervisory jurisdiction can, however, be legitimately exercised where the order passed by the Court is in violation of the fundamental principles of justice and fair play or there is a flagrant defect in the procedure or the order results in manifest injustice or the Tribunal has exercised the jurisdiction not vested in it by law or refused to exercise the jurisdiction vested in it.

18. In the case of ***Mohd. Yunus*** (supra), on which reliance was placed by Mr. Naphade, the Supreme Court expounded the contours of the supervisory jurisdiction as under:

“7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority", and not to correct an error apparent on the face of the record, much less an error of law. In this case there was, in our opinion, no error of law much less an error apparent on the face of the record. There was no failure on the part of the learned Subordinate Judge to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the procedure adopted by him not in consonance with the procedure established by law. In exercising the supervisory power under

Article 227, the High Court does not act as an Appellate Court or Tribunal. It will not review or re-weigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision.”

19. In the case of *Trimbak Gangadhar Telang* (supra), the Supreme Court enunciated the limits of the supervisory jurisdiction in the following words:

“3. It is a well settled rule of practice of this Court not to interfere with the exercise of discretionary power under Articles 226 and 227 of the Constitution merely because two views are possible on the facts of a case. It is also well established that it is only when an order of a Tribunal is violative of the fundamental basic principles of justice and fair play or where a patent or flagrant error in procedure or law has crept or where the order passed results in manifest injustice, that a court can justifiably intervene under Article 227 of the Constitution.”

20. At the same time, it does not imply that where the courts below have not taken into account the evidence which bears upon the matter in issue and have, thus, arrived at a finding of fact which appears to be perverse, the High Court would be justified in interfering with the order passed by the Court or Tribunal. Thus in the case of *Kishore Kumar Khaitan and anr. vs. Praveen Kumar Singh*⁸, the Supreme Court enunciated as under:

“12. The jurisdiction under Article 227 of the Constitution may be restrictive in the sense that it is to be invoked only to correct errors of jurisdiction. But when a court asks itself a wrong question or approaches the question in an improper manner, even if it comes to a finding of fact, the said finding of fact cannot be said to be one rendered with jurisdiction and it will still be amenable to correction at the hands of the

8 AIR 2006 Supreme Court 1474.

High Court under Article 227 of the Constitution. The failure to render the necessary findings to support its order would also be a jurisdictional error liable to correction.”

21. In the case at hand, on a careful consideration of the material on record, the broad position which emerges is that:

Late Ramchandra had acquired the suit land from the original holder under a Sale Deed dated 11th August, 1978. He had two wives. Late Muktabai and Mankabai (D2). Both late Muktabai and Mankabai (D2) executed a sale deed in favour of the plaintiff on 11th February, 1982. Vijay Dhumal (D1) and Sangeeta Bhosle (D4) were shown minors. Whereas Ratnaprabha Shinde (D3) was shown to be 20 years of age. Mankabai (D2) executed the sale deed for herself and in the capacity of the natural guardian of defendant Nos.1 and 4. Pursuant to the said registered sale deed the name of the plaintiff came to be mutated to the record of rights of the suit land vide ME No.874 on 24th August, 1982. An endorsement was made in the other rights column that the transaction, to which the said ME No.874 referred to, was in violation of the provisions of the MT&AL Act, 1948. It appears that the names of defendant Nos.1 to 4 were shown in the record of rights till the year 1986 – 1987. From the year 1987 – 1988, the name of the plaintiff was mutated to both holder’s and cultivator’s column.

However, in the other rights column, the name of late Ramchandra continued to appear. It would be contextually relevant to note that by an order dated 21st July, 1990, the ALT, Purandar, declared that the provisions of Section 84C of the MT&AL Act, 1948 were not attracted to the transaction in question and, therefore, the entry, “transaction in violation of the provisions of MT&AL Act” be deleted from the record of rights of the suit land.

22. The scene moved to the year 2020. It appears that the defendants filed an application to mutate their names to the record of rights of the suit land in the other rights column. On 27th November, 2020, and, thereupon, ME No.7792 was effected by the revenue official. In the appeal preferred by the plaintiff the Sub-divisional Officer, Purnadar, set aside the said ME No.7792. The second appeal preferred by the defendants also came to be dismissed.

23. In the backdrop of the aforesaid instrument and the record of rights, the trial court was of the view that though the name of the plaintiff was mutated to the record of rights of the suit land yet the assessment list issued by village panchayat Veer in respect of property No.2105 indicated that there was a structure over Gat No.680 in the name of Vijay Dhumal (D1); an

electricity connection was also issued by MSEDCL to the said premises which stood in the name of defendant No.1, as was evident from the Electricity Bill for the month of June 2021, and the two adjoining landholders had filed affidavits affirming that the defendants were in cultivation of the suit land and, therefore, those documents commanded preference over the entries in the record of rights.

24. Before the learned District Judge, an endeavour was made by both the parties to place additional evidence/material. However, the learned District Judge rejected those applications on the premise that no case under Order 41 Rule 27 of the Code was made out. Confining himself to the material which was produced before, and considered by, the trial court, the learned District Judge concurred with the view of the trial court. It was, however, noted that one of the deponents had affirmed another affidavit to state that the plaintiff was in possession and cultivation of the suit land and there were affidavits of other persons, who subscribed to the version that the plaintiff was in possession and cultivation of the suit land.

25. In view of the aforesaid *prima facie* concurrent findings of facts normally this Court would be loathe to interfere with such discretionary orders. However, in the facts of the case at hand,

the courts below seem to have been swayed by the fact that the Mankabai (D2) had executed the sale deed in favour of the plaintiff without obtaining the prior permission of the Court and, therefore, the sale deed was voidable. The time-lag which had elapsed i.e. more than 38 years was not adequately taken into account by the courts below. The developments which normally associate with such passage of almost four decades ought to have informed the exercise of discretion.

26. As noted above, with a complete lull from the year 1990, there was a flurry of activities in the year 2020 starting with the mutation of the names of defendant Nos.1 to 4 in the other rights column of the suit land. Evidently, the entry in the assessment list and the electricity connection to the house premises situated in suit land were also contemporaneous to the proceedings before the revenue authority in the year 2020.

27. The matter does not rest at that. There is material to indicate that the village panchayat passed a resolution to delete the entry of House No.2105 in the suit land on 25th December, 2021. Certain proceedings, including a prosecution, came to be initiated for obtaining the electricity connection by allegedly submitting false documents. The question that wrenches to the fore is, could the courts below have refused to grant injunction

on the basis of the material which they look into account. If the assessment list and the electricity bill are shown to be unworthy of reliance, even at a *prima facie* stage, what remains is the affidavits of the adjoining landholders, one of which was promptly retracted.

28. At this stage, the legal position as regards the alienation, which is voidable under Section 8(3) of the Act, 1956, deserves to be considered. Sub-section (3) of Section 8 declares that any disposal of immovable property by a natural guardian in contravention of sub-section (1) or sub-section (2) is voidable at the instance of the minor or any person claiming under him. Mr. Naphade made an endeavour to urge that it is not peremptory for the erstwhile minor to institute a suit to set aside the alienation. The repudiation of the alienation can be manifested by acts or conduct of erstwhile minor including by remaining in possession and contesting the suit instituted by the purchaser.

29. In the light of the view which this Court is persuaded to take, I do not deem it appropriate to conclusively determine this issue. Suffice to note that the submissions canvassed by Mr. Naphade that under no circumstances it is necessary for the erstwhile minor to institute the suit or seek the relief of setting aside of the alienation cannot be accepted unreservedly.

30. In the case of *Murugan* (supra) the Supreme Court after an elaborate analysis and advertent to the previous pronouncements, enunciated that a suit by quondam minor to set aside the alienation of the property by the guardian is governed by Article 60 of the Limitation Act, 1963 and the minor must file the suit within the prescribed period of three years after attaining majority. The Supreme Court went on to hold that the alienations which were voidable at the instance of the minor or on his behalf, are required to be set aside before the relief of possession can be claimed by the plaintiff. Suit filed on behalf of the minor without seeking prayer for setting aside the sale deeds was not properly framed and could not have been decreed.

31. In the case of *Vishwambhar and others vs. Laxminarayan (Dead) through LRs.*⁹, the Supreme Court enunciated the law as under:

“9. Article 60(b)(ii) refers to a suit when a ward dies before attaining majority. The present is a case where Palanivel died on 11.02.1986 before attaining majority, his date of birth being 16.07.1978, the limitation to avoid instrument made by guardian of the ward is 03 years from the death of ward when he dies before attaining majority. This Court had occasion to consider Articles 60 and 65 of the Limitation Act in reference to alienation made by a de-facto guardian of a minor. In the case of *Madhukar Vishwanath Vs. Madahav and Others*, (1999) 9 SCC 446, the maternal uncle of the appellant has executed a sale deed. The appellant after becoming major on 22.08.1966 filed a suit on 07.02.1973

9 AIR 2001 SC 2607.

praying that transferors be required to deliver the possession of the property. On behalf of appellant, Article 65 was relied for the purposes of limitation. This Court held that it is Article 60 and not Article 65, which is applicable. Paragraph No. 4 and 5 of the judgment are relevant, which are quoted as below:-

“4. XXXXXXXXXX

That the defendant, Baburao Madhorao Puranik, was the appellant's de facto guardian had been established and, therefore, the disposal by him of the said property was void. Being void, it was open to the appellant to file the suit for possession of the said property and the period for limitation for such suit was prescribed by Article 65.

5.Even if the suit was entertained as pleaded, no decree for possession could have been passed without first finding that the alienation was not for legal necessity and was, therefore, bad in law. To such a suit the provisions of Article 60 apply. Article 60 relates to a suit to set aside a transfer of property made by the guardian of a ward by the ward who has attained majority and the period prescribed is three years commencing on the date on which the ward attains majority.....”

32. In the case at hand, a period of more than 20 years has elapsed since defendant Nos.1, 3 and 4 attained majority. Not only defendant Nos.1, 3 and 4 did not institute the suit to set aside the transfer in favour of the plaintiff but *prima facie* there is no material to indicate that the erstwhile minors repudiated the transaction by some other act or conduct after they attained majority within the stipulated period of limitation. As noted above, there was a flurry of activity in the year 2020. That brought in its trial the controversy over the factum of possession.

33. As both the parties intended to produce additional documents and the trial court as well as the Appellate Court have confined themselves to the aforesaid material only, in the considered view of this Court, it may not be appropriate to determine the factum of possession, even *prima facie* by examining the documents tendered by the parties before this Court, of which the trial court had no benefit. It would, therefore, be in the fitness of things that the orders are set aside and the application is remitted back to the trial court for a fresh decision after providing an opportunity to the parties to produce further documents/material. In the meanwhile, it would be expedient in the interest of justice to continue the ad-interim order passed by this Court on 16th February, 2024 till the decision on the application for temporary injunction.

34. The upshot of the aforesaid consideration is that the petition deserves to be partly allowed.

35. Hence, the following order:

: O R D E R :

- (i) The petition stands partly allowed.
- (ii) The impugned order as well as the order passed by the trial court on the application (Exhibit-5) dated 19th July, 2021 stand quashed and set aside.

- (iii) The application (Exhibit-5) stands restored to the file of the Civil Judge, Junior Division, Saswad.
- (iv) The learned Civil Judge is requested to hear and decide the said application afresh after providing an effective opportunity of hearing to the parties.
- (v) The plaintiff shall file affidavit and produce documents before the trial court within a period of two weeks from the date of uploading of this order. The defendants are at liberty to file further affidavit and documents within two weeks thereafter.
- (vi) The learned Civil Judge is requested to make an endeavour to hear and decide the said application as expeditiously as possible.
- (vii) In the meanwhile, the ad-interim order passed in terms of prayer clause (b) shall continue to operate till the final decision of the application (Exhibit-5).

No costs.

Rule made absolute in the aforesaid terms.

[N. J. JAMADAR, J.]