

Arun Sankpal

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

WRIT PETITION NO. 15165 OF 2024

Balasaheb Nagnath Tekale
Age: 52 years, Occ.-Agriculturist,
R/at Papari, Tal. Mohol,
Dist: Solapur

...Petitioner

Versus

1. Anand Jalindar Londhe
Age 56 years, Occ. Agriculturist,
2. Shobha Jalindar Londhe
Age 66 years, Occ. Agriculturist
3. Karuna Mohan Sathe
Age 41 years, Occ. Agriculturist,
All are R/o: Papari, Tal. Mohol,
Dist: Solapur.

...Respondents

Mr. R.M Haridas, i/b Prasad Kulkarni with Nakul Vivek Shukla, for
the Petitioner.
Ms. Manisha Devkar, for the Respondents.

CORAM: N. J. JAMADAR, J.
DATED: 27th FEBRUARY, 2025

JUDGMENT:-

- 1.** Rule. Rule made returnable forthwith and with the consent of the learned Counsel for 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 8th October 2024 passed by the learned District Judge,

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Solapur in MCA No. 69 of 2024 whereby the Appeal preferred by respondents-original defendants came to be allowed by setting aside an Order dated 26th July 2024 passed on an Application (Exhibit “5”) by the learned Civil Judge, Mohol, in RCS No. 197 of 2022, whereunder the respondents were restrained from causing obstruction to the possession and cultivation of the plaintiff on the southern side 2 H 62 R land out of Gat No. 587/2/B situated at Papari (the suit land).

3. The background facts leading to this Petition can be stated in brief as under:

3.1 The petitioner-plaintiff had purchased the suit land which was part of Gat No. 587/2/B admeasuirng 4H 61R from Bhagwan Krishna Kasar under a registered Sale Deed dated 2nd May 2012. In the year 2019, the respondents-defendants asserted that they were to purchase the suit land from the Government. In the month of July 2022, the defendants asserted that they had paid the purchase price, the suit land came to be allotted to them. Enquires revealed that the defendants in connivance with the Revenue Officials had prepared false and fabricated record. On the strength of those documents, the defendants threatened to dispossess the plaintiff. Hence the action by way of suit for perpetual injunction to restrain the defendants from

causing obstruction to the possession of, and cultivation by, the plaintiff of the suit land.

3.2 In the said suit, the plaintiff filed an application for temporary injunction.

3.3 The defendants resisted the suit and the application. The substance of the resistance put-forth by the defendants was that Gat No. 587 was formed by consolidation of Survey No. 236/2 and 237/2. Pursuant to the orders of the Agricultural Land Tribunal (“ALT”) passed under Section 32P(2)(c) of Maharashtra Tenancy and Agricultural Land Act 1948 (“MT & AL Act”) the possession of land bearing Survey Nos. 236/2 and 237/2 was resumed by the competent authority and a Mutation Entry bearing No. 1829 was accordingly certified. Thereafter, the eligible landless persons were allotted lands out of Survey No. 236/2 and 237/2. Resultantly, the original holder Krishna Rama Kasar and his son Bhagwan Krishna Kasar were completely divested of the title in the said agricultural land. However, in the consolidation scheme, instead of 18 Acre 22 Guntha land, covered by Survey Nos. 236/2 and 237/2, an area admeasuring 24 Acre 35 Guntha i.e. 10 H 6 R was shown against Gat No. 587. Thus, taking undue advantage of such a shallow entry of enhanced area against Gat No. 587, Bhagwan Kasar fraudulently

executed a Sale Deed in favour of the plaintiff and, resultantly, no title could have been lawfully conveyed to the plaintiff thereunder.

3.4 By an Order dated 26th July 2024, the learned Civil Judge, Mohol, was persuaded to allow the application and restrain the defendants from causing obstruction to the possession and cultivation of the plaintiff over the suit land observing *inter alia* that on 16th April 2012, the competent authority had passed an order deleting an entry of limited tenure qua Gat No. 587/2/B, of which Bhagwan Kasar was shown to be the holder, and, thereafter, the name of Bhagwan Kasar was mutated to the record of rights of the suit land. The report and panchnama prepared by Talathi Papari indicated that the plaintiff was in possession of the suit land to the extent of 2 H 40 R. The defendants, on the other hand, had acquired ownership over the suit land under the certificate of purchase issued by ALT dated 28th February 2022. Hence, since the plaintiff was in settled possession of the suit land and the question as to whether the possession of the plaintiff was referable to a lawful title was a matter for trial, till the final disposal of the suit, plaintiff's possession was required to be protected.

3.4 In the Appeal, the learned District Judge was persuaded to set aside the order passed by the Trial Court observing *inter alia* that the plaintiff was not in settled possession of the suit land; it appeared

that since Jalindar Londhe, the allottee had not paid the purchase price, the suit land was in a state of *res nullius* and the plaintiff had committed encroachment over the suit land. The learned District Judge was of the view that Bhagwan Kasar, vendor of the plaintiff, had no title in the suit land as the possession of entire Survey Nos. 236/2 and 237/2 was resumed by the ALT under the provisions of Section 32 P(2) of the MT And AL Act and, therefore, Bhagwan Kasar could not have conveyed a better title to the plaintiff.

4. Being aggrieved the plaintiff has invoked the writ jurisdiction of this Court.

5. By an order dated 26th November 2024, while issuing notice to the respondents, this Court was persuaded to grant ad-interim relief restraining the respondents from causing obstruction to the possession of the petitioner-plaintiff over the suit land.

6. I have heard Mr. Haridas, the learned Counsel for the petitioner, and Ms. Manisha Deokar, the learned Counsel for the respondents, at some length. The learned Counsel for the parties took the Court through the pleading and the material on record.

7. Mr. Haridas, the learned Counsel for the petitioner, submitted that the learned District Judge committed an error of law in interfering with a well reasoned discretionary order passed by the Trial Court. In the process, the learned District Judge lost sight of the

settled position in law that at the stage of consideration of an application for temporary injunction, the factum of possession assumes material significance. In the case at hand, there was overwhelming material in the form of the revenue record and the panchnama drawn by the revenue authorities which unmistakably indicated that plaintiff was in possession of the suit land since the year 2012. Yet, the learned District Judge returned a finding that the plaintiff was not in the settled possession. Whether the said possession was referable to a lawful title is a matter for adjudication at the trial, urged Mr. Haridas.

8. To buttress this submission, Mr. Haridas placed reliance on a Judgment of this Court in the case of **Baban Anantrao Naik Vs Pramila Uttamrao Yenare & Anr**¹ wherein it was enunciated that at the time of determination of an application for temporary injunction, the factum of possession would be the relevant factor. Whether the possession is lawful possession or not would not be the subject matter of the enquiry. Even a trespasser in settled possession is entitled for injunction as has been held by the Apex Court in the case of **Rame Gowda (dead) by L.Rs. Vs M. Varadappa Naidu (dead) by L. Rs. And Anr**, 2004(1) SCC 769.

¹ 2011 (6) All MR 15.

9. Per contra, Ms. Devkar, the learned Counsel for the respondents-defendants, supported the impugned order. Ms. Devkar submitted with tenacity that the claim of the plaintiff of acquisition of title over the suit property is plainly untenable. Bhagwan Kasar, the vendor of the plaintiff, had no title which he could have conveyed to the plaintiff. The name of Bhagwan Kasar was wrongly mutated to the record of rights of Survey No. 587/2/B by the revenue authorities. Taking undue advantage of the said Mutation Entry, Sale Deed came to be executed in favour of the plaintiff. Thus, the learned District Judge had correctly evaluated the material on record and returned a finding that the predecessor-in-title of the plaintiff was completely divested of the ownership of the suit land. Resultantly, no interference is warranted in the impugned order.

10. At the outset, the fact that the order passed by the Trial Court granting injunction in favour of the plaintiff was a discretionary order deserves to be kept in view. That brings in the element of jurisdictional limits of the Appellate Court in an Appeal against a discretionary order.

11. 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.

12. 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, 1990 (supp) SCC 727 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 Joseph (1960) 3 SCR 713 :

“... 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)

13. In the case of Seema Arshad Zaheer and Ors. V/s. Municipal Corporation of Greater Mumbai and Ors. (2006) 5 SCC 282. 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)

14. On the aforesaid touchstone, it is required to be appreciated whether the learned District Judge was justified in interfering with a discretionary order passed by the Trial Court. Whether the order passed by the Trial Court suffered from such infirmity or perversity as to warrant interference by the Appellate Court?

15. Indisputably, the suit land was mutated in the name of Bhagwan Kasar. The record of rights indicates that since 2006-2007, the predecessor-in-title of the plaintiff was cultivating the suit land. The plaintiff purchased the suit land under a Sale Deed dated 2nd May 2012. Thereafter the name of the plaintiff came to be mutated to the suit land. Conversely, there is material on record to indicate that the certificate of purchase in respect of an area admeasuring 1H 98 R out of Gat No. 587/2/B, was issued by the ALT-Tahashildar, Mohol, on 22nd May 2022 in favour of the defendants under Section 32 P(6) of the MT & AL Act. As noted above, the substance of the defence of the defendants is that the lands bearing old Survey Nos.

236/2 and 237/2, which were consolidated into Gat No. 587/2/B, were resumed under the proceedings under Section 32P of the MT & AL Act. The original holder Krishna Kasar was thus divested of the ownership over the suit land. Bhagwan Kasar, the son of Krishna Kasar, took undue advantage of mutation of an additional area against the Gat No. 587/2/B and sold the suit land to the plaintiff. In the meanwhile, the competent authority had allotted various portions of land to the eligible landless persons. As there was default on the part of Jalindar Londhe, the predecessor-in-title of the defendants, in payment of purchase price, the certificate of purchase under Section 32P(6) of the MT & AL Act came to be issued on 28th February 2022.

16. I find substance in the submission of Mr. Haridas that all these questions merit adjudication at the trial. At the stage of consideration of the application for temporary injunction, the Court was required to ascertain the factum of possession. As noted above, the Sale Deed came to be executed in favour of the plaintiff in the year 2012. The record of right of the suit land indicates that the plaintiff's name was mutated to the holders and cultivators column and the plaintiff was taking the crops. In contrast the certificate of purchase was issued in favour of the defendants on 28th February 2022. In this view of the matter, the defendants cannot assert any

proprietary title, much less possession, over the suit land prior to the grant of the certificate of purchase under Section 32P(6) of the MT & AL Act.

17. It is in the aforesaid context, the factum of possession was required to be appreciated by the learned District Judge. A panchnama drawn on 5th November 2012 throws light on the position at site. It records that the plaintiff was in possession of 2H 40R land out of the Gat No. 587/2/B and no land was available for being handed over to the defendants. The aforesaid panchanama, *prima facie*, seals the issue of possession of plaintiff over the suit land.

18. The learned Civil Judge was thus well within his rights in observing that the plaintiff was *prima facie* in possession of the suit land. Though the learned District Judge referred to and extracted the principles enunciated in the case of **Rame Gowda (Supra)** yet, did not correctly apply those principles to the facts of the case. The finding of the learned District Judge that the plaintiff was not in settled possession of the suit land, though the plaintiff, *prima facie* came in possession of the suit land under the Sale Deed dated 2nd May 2012, is clearly against the weight of the material on record. Moreover, in the panchnama drawn by the Revenue Authorities on 5th November 2012 the factum of possession of the plaintiff was

categorically recorded. In the face of this material, the learned District Judge was clearly in error in interfering with the discretionary order passed by the Trial Court and substituting his own views for the plausible view taken by the learned Civil Judge on the basis of the objective material on record.

19. In these circumstances, especially having regard to the long standing possession referable to acquisition of title under a registered instrument, the balance of convenience tilts in favour of the plaintiff. The plaintiff would suffer irreparable loss if he is dispossessed during the pendency of the suit.

20. Resultantly, the impugned order deserves to be quashed and set aside and the order passed by the Trial Court deserves to be restored.

21. Hence the following order:

: O R D E R :

- (i) The petition stands allowed.
- (ii) The impugned order dated 8th October 2024 passed by the learned District Judge in MCA No. 69 of 2024 stands quashed and set aside.

- (iii) The order dated 26th July 2024 passed by the learned Civil Judge on the application (Exhibit “5”) in RCS No. 197 of 2022 stands restored.
- (iv) The Rule made absolute in the aforesaid terms.
- (v) No costs.

[N. J. JAMADAR, J.]