

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

WRIT PETITION NO. 16726 OF 2024

Nasimabegaum Kemalpasha Patil	...Petitioner
Versus	
Vivek Keshav Kulkarni & Ors.	...Respondents

**WITH
WRIT PETITION NO. 16823 OF 2024**

Nasimabegaum Kemalpasha Patil	...Petitioner
Versus	
Vivek Keshav Kulkarni & Ors	...Respondents

Mr. Suhas S. Inamdar, for the Petitioner in both Petitions
Mr. G. S. Godbole, Senior Advocate a/w. Ms. Shivani Samel and Ms Shruti Tulpule for the Respondent Nos.1 & 2 in both the Petitions.

**CORAM : M. M. SATHAYE, J.
(IN CHAMBER)
DATED : 3rd APRIL 2025**

P.C.:

1. Heard learned counsel for the parties.
2. The Petitioner in both the petitions, is original Defendant No. 2 in Regular Civil Suit No. 595 of 2020 filed by Respondent Nos. 1 and 2, who are Plaintiffs. Application filed by Plaintiffs below Exhibit-5 as well as Application filed by Defendant No. 2 below Exhibit-28, both seeking injunction against each other from disturbing the possession, as claimed by the parties, were decided by common Order dated 02/09/2022. By the said common order, the Application filed by Respondent Nos. 1 and 2 was partly allowed by restraining the Petitioner from creating third party interest in the

suit property and application filed by Petitioner was allowed, restraining Respondent Nos. 1 and 2 from disturbing peaceful possession of Petitioner over the suit property, without following due process of law.

3. The Respondent Nos. 1 and 2 filed Miscellaneous Civil Appeal No. 138 of 2022 challenging the common order passed below Exhibit-28 and also filed Civil Appeal No. 139 of 2022 challenging the common order below Exhibit-5.

4. Both miscellaneous appeals have been allowed by impugned orders dated 12/08/2024, thereby rejecting Petitioner's Application Exhibit-28 and allowing Application by Respondent Nos. 1 & 2 below Exhibit-5. In short by the impugned orders, Defendants (including Petitioner) are restrained from disturbing peaceful possession of the Plaintiffs over the suit premises and the claim of Petitioner for interim injunction is rejected.

5. Case of the Respondent Nos. 1 & 2 / Plaintiffs is as under.

5.1. The Suit Plot is an open piece of land bearing plot No. 193 at Majrewadi, Tal. North Solapur, Dist. Solapur, admeasuring 510.34 sq.m. The suit plot was purchased by father of Respondent Nos. 1 & 2 - late Dr. Keshav Dattatray Kulkarni ('deceased Keshav' for short) under a registered sale deed dated 24/03/1971 (Reg. No. 817) from earswhile owner Malayya N. Madral & ors. It was given effect in the record of rights vide mutation entry (ME) No. 6028. Deceased Keshav was in possession of suit plot. Deceased Keshav executed a will dated 04/02/2014 bequeathing the suit plot to Respondent Nos. 1 & 2 equally. Thereafter deceased Keshav died on 08/01/2017. In 2011, Respondent Nos. 1 & 2 had put up fencing to suit plot with initials KD on cement poles and in January 2020, they had put up his father's name

with mobile number on a board in suit plot. However, on 28/02/2020 when the Respondent No. 1, who is a doctor, was in his clinic, he received a phone call from son of Petitioner, threatening him that he will not allow the plaintiffs to carry on any activities on suit plot, because his mother (Petitioner) has got right over it. When Plaintiffs asked whether there is any record to show right of Petitioner, her son was not ready to show any documents. This led Respondent No.1 to filing a police complaint which was forwarded to crime branch. Statement of the Respondent No. 1 was recorded and crime was registered.

5.2. It transpired that Respondent No. 3 / Defendant No. 1 has allegedly purchased the suit plot through impersonation, claiming to be deceased Keshav under a registered sale dated 8/11/2013. The said document is a product of fraud and impersonation. The person shown in document dated 8/11/2013 was not Plaintiffs' father; the age and address shown are not correct. It further transpired that Petitioner is claiming title from Respondent No. 3 / Defendant No. 1 under registered sale dated 06/03/2014, which is executed shortly after the first sale. It is contended that Defendant No. 1 and Defendant No. 2 are trying to illegally dispossess the Plaintiffs. In such circumstances, the suit is filed seeking declaration that Defendants have no right in the suit plot, declaration that sale deeds dated 08/11/2023 executed in favour of Defendant No. 1 and dated 06/03/2014 in favour of Petitioner / Defendant No. 2 are not binding on Plaintiffs. Permanent injunction is sought against Defendants from disturbing Plaintiffs' possession. Both the sale deeds in favour of Defendants are sought to be produced before Court, its cancellation is sought. Also an application below Exhibit 5 was filed seeking interim injunction against the Defendants.

6. The Petitioner / Defendant No. 2 filed written statement and counter-claim inter alia contending as under.

6.1. She sought permanent injunction restraining the Plaintiffs from disturbing her possession and for compensatory costs. It is material to note that original sale deed in favour of deceased Keshav is not challenged by the Petitioner.

6.2. The case of the Petitioner is that suit is barred by limitation. That Plaintiffs father had purchased the suit plot from his own income and he had full right of selling the same to Defendant No. 1, which he sold in 2013. That Petitioner has purchased the same from Defendant No. 1 for valuable consideration under registered sale dated 06/03/2014 and she is in possession of the suit plot since then. That Plaintiffs seem to have prepared bogus documents. That deceased Keshav never challenged sale deed in favour of Defendant No. 1. That document of 'will' of deceased Keshav claimed by the Plaintiffs is bogus, illegal and fabricated will have to be proved. That Plaintiffs have not come before the Court with clean hands.

7. The Petitioner has filed compilation of documents, placing on record, copies of the sale deeds and other relevant documents.

8. Learned counsel Mr. Inamdar appearing for the Petitioner, submitted that the documents on record are sufficient to hold that the Petitioner is in actual possession of the suit plot. It is submitted that the Trial court had taken a balanced view of the matter, holding Petitioner in possession of suit plot, thereby restraining the Plaintiffs from disturbing her possession but restraining her from creating third-party interest. He submitted that photographs of the shed erected by the Petitioner on the suit plot was sought

to be placed on record by the Plaintiffs, but they have filed purshis to withdraw those photographs. He submitted that the Petitioner is in possession on the basis of registered sale deed from Defendant No. 1, and therefore pending the suit, her possession cannot be disturbed.

9. Per contra, Mr. Godbole, learned senior counsel for the Respondent No. 1 and 2, has vehemently opposed the Petitions. He submitted that the sale deed in favour of Defendant No. 1 is a fabricated document brought into existence by impersonation. Drawing attention of the Court to various documents and details, it is submitted that the age of Plaintiffs' father and address as shown in sale deed in favour of Defendant No. 1 does not match. He has relied upon a report of sub-register of Solapur-North-1 dated 15/06/2022, submitted to police authorities, stating that the document in favour of Defendant No. 1 dated 08/11/2013 is executed by impersonation and a bogus person was present claiming to be Keshav Dattatray Kulkarni while executing the document. It is submitted that since the very document by which Defendant No. 1 claims to have got title and possession is a product of impersonation, Petitioner claiming right through Defendant No. 1, cannot have any better title or claim to possession. That even the Trial court while granting injunction against the Plaintiffs had come to the conclusion that documents on record *prima facie* show that there is something wrong with them.

10. I have considered the rival submissions and perused the record.

11. Perusal of the order of the Trial Court shows that the report from the sub-registrar's office to the police authorities dated 15/06/2022 was considered and even the Trial Court was of the opinion that *prima facie*, there is something wrong with the execution of sale deed purportedly by

Plaintiffs' father. The Trial court has also recorded that *prima facie*, validity of the sale deeds in favour of Defendant Nos. 1 & 2 are 'in doldrum'. That is the word used by the Trial Court. It is further noted that the concerned sub-registrar has opined that crime should be registered under section 82 of the Indian Registration Act, 1908 because sale deed dated 08/11/2013 has been executed by an imposter instead of deceased Keshav.

12. It is seen from copy of registered sale deed dated 24/03/1971 that Plaintiffs' father - deceased Keshav was 35 years old when he purchased the said plot from original owner in the year 1971. Therefore, *prima facie* it is impossible that in the year 2013, deceased Keshav could be 48 years old as claimed in the sale-deed in favour of Defendant No. 1. It is also seen from the sale deed in favour of Defendant No. 1 dated 08/11/2013 that an identity card (ID) is annexed to it, claiming to be of deceased Keshav. It is apparently an election voting card. It shows age of deceased Keshav on '01/01/1995' as 30 years, which makes him 1965 born, which *prima facie* makes him 6 years old when he purchased the said plot in the year 1971. The said ID also shows some other address as address of deceased Keshav, compared to his regular address. The sale deed in favour of Defendant No. 1 is apparently 'an all cash deal' and so is the transaction between Defendant No. 1 and the Petitioner, showing payment of full consideration in cash. The sale deed in favour of Defendant No. 1 also notes that ready reconer value of the suit plot is Rs. 9,70,000/- but actual consideration shown to have paid is Rs.4,50,000/-. Therefore the said sale deed in favour of Defendant No. 1 is apparently more than 50% undervalued. All this material available on record stares the Court in the face.

13. In my view, all this material is sufficient to *prima facie* hold that the

sale in favour of Defendant No. 1 itself is highly suspicious and not worth believing. Once, the title and possession claimed by Defendant No. 1 on the basis of such sale deed of 2013 comes under serious cloud, the Petitioner, claiming subsequently through her sale-deed of 2014 from Defendant No. 1, cannot have any more significance. Therefore, prima facie even Petitioner's title and possession is seriously questionable. For all these reasons, the documents produced by the Petitioner to show her prima facie possession over the suit plot are not sufficient.

14. Impugned orders show that the Appellate Court has considered some of these aspects and has exercised discretion against the Petitioner and in favour of the Respondent Nos. 1 and 2. Viewed in the light of what is narrated above, I have no hesitation to hold that the view taken by the Appellate Court and the discretion as exercised, do not suffer from any illegality or perversity. The view taken is highly probable view on the basis of material available on record and there is no question of its substitution by this Court.

15. Therefore I do not find this to be a fit case to interfere in writ jurisdiction. Both the writ petitions are accordingly dismissed. No order as to costs.

16. All concerned to act on duly authenticated or digitally signed copy of this order.

(M. M. SATHAYE, J.)