

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1278 OF 2025

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Rangrao Ramchandra Yadav and Others	...Petitioners
vs.	
Kishor Vijay Sangar and Others	...Respondents

Mr. Chetan Patil i/b. Mr. Mandar Bagkar, for the Petitioners.
Mr. Manoj Patil, for the Respondents.

CORAM : N. J. JAMADAR, J.
DATE : JANUARY 30, 2025

P.C:

1. Heard the learned counsel for the parties.

2. The petitioners/ original plaintiffs have assailed the legality, propriety and correctness of the judgment and order dated 15th January, 2025 passed by the learned District Judge, Kolhapur in MCA No. 153 of 2024 whereby the learned District Judge allowed the appeal preferred by the respondent Nos. 1 and 2/ original defendant Nos. 2 and 3 against the order dated 12th July, 2024 passed by the learned Civil Judge on an application granting temporary injunction and thereby set aside the order of temporary injunction.

3. The petitioners claimed that their predecessor in title was a protected tenant of the land bearing Gat No. 336/2 admeasuring 1

H 42 R (suit land). The predecessors in title of defendant No. 1 were the holders of the land. After the demise of the protected tenant, the plaintiffs have been in actual possession and cultivation of the suit land. By a registered instrument dated 25th January, 2024 defendant No. 1 unlawfully professed to sell the suit land to defendant Nos. 2 and 3. On the strength of the Sale Deed the defendant Nos. 2 and 3 attempted to cause obstruction to the peaceful possession and cultivation of the plaintiffs over the suit land.

4. Initially by an order dated 3rd July, 2024, the learned Civil Judge directed the parties to maintain the status-quo. By an order dated 12th July, 2024 the learned Civil Judge restrained defendant Nos. 2 and 3 from interfering with the possession of the plaintiffs over the land under the cultivation shown in photographs Exh. 46/1 to 46/10 till the disposal of the suit. Being aggrieved, the respondent Nos. 1 and 2 carried the matter in appeal, in which the impugned order came to be passed.

5. Mr. Chetan Patil, learned counsel for the petitioners, urged that the impugned order suffers from serious jurisdictional error as the learned District Judge interfered with a well reasoned order

passed by the trial Court. Since it was a discretionary order, the appellate Court could not have interfered with the said order by substituting its own view for the view taken by the trial Court. Secondly, the order was set aside by the District Judge by taking into account the orders passed by the authorities under the Maharashtra Tenancy and Agricultural Lands Act, 1949 (the Act, 1949) which were not before the trial Court. No case for exercise of jurisdiction under Order XXXXI Rule 27 of the Code of Civil Procedure, 1908 and permit the respondent Nos. 1 and 2 to file additional documents was made out. Since the trial Court had recorded a clear and categorical finding that the plaintiffs were in possession of the suit land, the learned District Judge could not have interfered with the said finding of fact.

6. Mr. Manoj Patil, learned counsel for the respondent Nos.1 and 2, submitted that the plaintiffs had not approached the Court with clean hands. The plaintiffs had suppressed the fact that they had filed a proceeding under section 32-G of the Act, 1949 and it was dismissed by a judgment and order dated 24th December, 2022. In fact, the name of the predecessor in title of the plaintiffs came to be deleted in the year 1963 itself. Mr. Patil further submitted that the predecessor in title of the plaintiffs was allegedly a protected tenant

of the land admeasuring 24 H 2 R. However, the suit came to be instituted in respect of a relatively smaller tract of land admeasuring 1 H 42 R only. The learned Civil Judge did not at all advert to these facts and proceeded to grant injunction on the basis of a mutation entry, which was also deleted decades ago.

7. The parameters for interference in the discretionary order passed by the trial Court are well recognized. Ordinarily, the appellate Court would not interfere with the exercise of discretion in the matter of grant of temporary injunction by the trial Court and substitute its own discretion therefor, except where the discretion has been shown to have been exercised arbitrarily, capriciously or perversely or where the order of the Court under scrutiny ignores settled principles of law.

8. A useful reference in this context can be made to a decision of the Supreme Court in the case of **Seema Arshad Zaheer & Ors. vs. Municipal Corporation Of Greater Mumbai and Ors.**¹ wherein the circumstances in which the appellate Court can interfere with the order of the trial Court were enunciated as under:-

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

1 AIR 2006 SC 159.

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.

9. On the aforesaid touchstone, reverting to the facts of the case, the learned District Judge seems to have correctly exercised the jurisdiction to interfere with the discretionary order. The learned District Judge found that the mutation entry in the name of the plaintiffs and their predecessor in title was deleted in the year 1974. There were proceedings before the authorities under the Act, 1949. In the year 2016, the petitioners had instituted a proceeding under section 32 G of the Act, 1949. By a judgment and order dated 24th December, 2022, the Agricultural Lands Tribunal negatived the claim of the petitioners.

10. Mr. Manoj Patil was justified in drawing attention of the Court to observations in the said order which indicate that the petitioners were aware of the deletion of mutation entry No. 3893 (on which reliance placed by the trial Court) long back. It would be contextually relevant to note that in the plaint, the plaintiffs chose to maintain a stoic silence regarding the proceedings before the authorities under the Act, 1949.

11. In the aforesaid view of the matter, as the edifice of the plaintiff's claim was based on the fact that their predecessor in title was a protected tenant and the proceedings before the authorities under the Act, 1949 negatived the said claim, the learned District Judge was justified in relying upon the said material. The learned District Judge thus committed no error in correcting the error in the exercise of the discretion by the trial Court. Resultantly, this Court does not find any reason to entertain this petition in exercise of the supervisory jurisdiction.

12. The petition stands dismissed.

(N. J. JAMADAR, J.)