

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4360 OF 2025

Ashwinikumar Suryakant } Petitioners
Bhandalkar and Anr.

V/s.

Prabhakar Baburao Nehre and Ors. } .Respondents

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Mr. Kalpesh Patil, for the petitioners.

CORAM : N.J. JAMADAR, J.

DATED : 7th APRIL 2025

ORDER:

1. Heard the learned counsel for the petitioners.
2. The challenge in this petition is to a judgment and order dated 17th March 2025 passed by the learned District Judge, Rajgurunagar-Khed, Dist.Pune in Miscellaneous Civil Appeal No. 15 of 2023, whereby the learned District Judge allowed the appeal by setting aside the order dated 28th February 2023 passed by the learned Civil Judge and thereby allowed the application for temporary injunction (Exhibit-5) and restrained the petitioners/respondents – defendants Nos. 4 and 5 from causing obstruction to the possession of the respondent no. 1 herein plaintiff, over the land bearing Survey No. 136/3/B (the suit property).

3. The plaintiff has purchased the suit property from defendant no. 1 under a registered sale deed dated 13th June 1997. The plaintiff was put in possession of the suit property. However, mutation entry could not be effected on account of the objections raised by the Revenue Authority.

4. Taking undue advantage of the mutation of the names of the defendant no. 1, and defendant nos. 2 and 3, who are the sons of the defendant no. 1, the defendant nos. 1 to 3 executed a sale deed in favour of the defendant nos. 4 and 5, despite being fully aware that the defendant nos. 1 to 3 had no subsisting right, title and interest in the suit property. On the strength of the said sale deed, the names of the defendant nos. 4 and 5 came to be mutated to the record of rights of the suit property. The defendant nos. 4 and 5 started to cause obstruction to the possession and cultivation of the plaintiff. Hence, the suit for declaration and injunction.

5. By an order dated 28th February 2023, the learned Civil Judge rejected the application preferred by the plaintiff for temporary injunction, on the premise that the defendant nos. 4 and 5 appeared to be *bona fide* purchasers of the suit land for valuable consideration and their names were also mutated to the record of rights of the suit land and, thus, the plaintiff did not appear to be in possession of the suit property.

6. The appeal, being MCA No. 15 of 2013, preferred by the plaintiff was also initially dismissed by the learned District Judge by judgment and order dated 25th July 2023. However, in Writ Petition

No. 13196 of 2023 by an order dated 24th January 2025, this Court remitted the matter back to the learned District Judge, for a fresh decision.

7. By the impugned order, the learned District Judge was persuaded to allow the appeal observing, *inter alia*, that the plaintiff, *prima facie*, established his vendor's possession over the suit property in the year 1997 and the fact that the Mutation Entry No. 46 to mutate the name of the plaintiff to the record of rights of the suit land was not certified did not detract materially from the plaintiff's claim. Since the defendant nos. 1 to 3 had no title, they could not have conveyed a better title in favour of the defendant nos. 4 and 5.

8. Mr. Patil, learned counsel for the petitioners, would urge that the learned District Judge could not have lightly interfered with the discretionary order passed by the Trial Court. Since the learned District Judge was exercising a limited jurisdiction, it was not open to take a different view of the matter on the same material. To this end reliance was placed on the decision of the Supreme Court in the case of '*Wander Ltd. And Anr. Vs. Antox India Pvt. Ltd.*'¹.

9. In any event, according to Mr. Patil, the learned District Judge could not have granted injunction against the petitioners as they were, *prima facie*, in possession of the suit land. Thus de-hors the aspect of legality and validity of the sale deed, the petitioners were entitled to protection of their possession. Reliance was sought to be placed on the judgment of the Supreme Court in the case of '*Rame*

1 (1990) Supp. SCC 727

Gowda (D) by Lrs. Vs. M. Varadappa Naidu (D) By Lrs. and Anr.²

10. I am afraid to accede to the submissions of Mr. Patil. The facts are plain yet hard. Incontrovertibly, defendant no. 1, the holder of the suit property, had executed a registered sale deed in favour of the plaintiff in the year 1997. It is not the case that the plaintiff took no steps to get his name mutated to the record of rights of the suit property. On 14th of August 1997 itself, the name of the plaintiff was mutated to the record of rights of the suit land vide ME No. 46,. However, the said entry was not certified as an objection was raised that the plaintiff was not an agriculturists. It seems, RTS proceedings ensued.

11. The Court cannot loose sight of the fact that after more than 25 years of execution of the said sale deed, defendant no. 1 to 3 professed to transfer the suit property to defendant nos. 4 and 5 despite having completely divested themselves of the title to the suit property long back. The Trial Court had, thus, committed a manifest error in basing the finding of possession on the strength of the mutation entry effected after the execution of such sale deed in the year 2022.

12. Therefore, the learned District Judge, in the second round, was justified in correcting the error which the Trial Court had fallen into. As the purported vendors of the petitioners had no semblance title, as it had passed to the plaintiff prior to 25 years, the petitioners claim of possession on the strength of such shallow instrument could

² (2004) 1 SCC 769

not have been accepted. The learned District Judge correctly appreciated the aspect of *prima facie* possession, balance of convenience and irreparable loss. Thus, this Court does not find any infirmity in the impugned order.

13. The petition stands dismissed.

(N.J. JAMADAR, J)