

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

WRIT PETITION NO. 8689 OF 2025

Shrikrishna Ramchandra
Dharap and Ors.

... Petitioners

Vs.

Swaroop Surendranath Chopra
Decd. thru LRs. and Ors.

.. Respondents

Mr. Vineet Naik, Senior Advocate *i/b. Rohit D. Joshi, for Petitioners.*

Mr. Mayur Khandeparkar *a/w. Kaustubh Patil, for Respondent No. 1.*

Mr. J.M. Joshi, *for Respondent No. 8/2.*

CORAM : SOMASEKHAR SUNDARESAN, J.

Date : July 2, 2025

Oral Judgement:

Context and Background:

1. This is a Petition under Article 227 of the Constitution of India impugning an order dated April 3, 2025 passed by the District Judge-3, Panvel (“***Impugned Order***”), rejecting an application filed by the Petitioners under Order VI, Rule 16 of the Code of Civil Procedure, 1908 (“***CPC***”). This Petition has come up before me due to recusal by the Regular Bench. With

the consent of the parties, the Writ Petition is taken up for final hearing and disposal.

2. The application that stands rejected in the Impugned Order was taken out in appellate proceedings (“***Appeal***”), in which the Petitioners had made a prayer for striking out pleadings in the original plaint of the Special Civil Suit No. 28 of 1985 (“***Suit 28***”), on the ground of abuse of the process of the Court by Respondent No. 1 in the course of Suit 28.

3. The basis for this prayer was the allegation that when the plaint in Suit 28 was filed, there purportedly had been no prayer seeking possession of the suit property, despite the plaint containing a prayer for specific performance.

Contentions of the Parties:

4. According to Mr. Vineet Naik, Learned Senior Counsel on behalf of the Petitioners, they were acquirers of the suit property pursuant to an instrument dated April 16, 1984 (“***1984 Agreement***”). The Suit 28 sought specific performance of an earlier agreement dated January 12, 1980 (“***1980 Agreement***”), by which the vendors from whom the Petitioners have acquired the suit property, had already agreed to sell the same property to Respondent No. 1.

5. According to the Petitioners, the 1980 Agreement had been validly terminated on December 9, 1983, and therefore, the same property had been legitimately bought by the Petitioners under the 1984 Agreement.

6. Consequently, it is the contention of the Petitioners that they have been legitimately in possession of the suit property from the vendors. The suit was decreed on January 7, 1991. Appellate proceedings initiated by the Petitioners remained pending and the aforesaid application under Order VI, Rule 16 of the CPC was taken out in the appellate proceedings. The basis of the application was purportedly a discovery that the Petitioners claim to have made only in 2024 upon inspection of the original court records. According to the Petitioners, in Suit 28, the Respondent No. 1 had not prayed for possession in the plaint although Suit 28 was for specific performance of the 1980 Agreement. However, when they examined the court records officially in 2024, they claim to have found the words “*and hand over possession*” inserted by hand in prayer clause 26(a) in the original plaint without any reference to any order permitting any amendment to include such words.

7. It is firmly asserted by Mr. Naik that the plaint received by the Petitioners and handled by them throughout the proceedings never had the words “*and hand over possession*” in the prayers. Such words were not even inserted by hand in the papers in their possession. Therefore, the Petitioners

claim that the insertion would never have been made unless there had been an abuse of the process of the court. The upshot of the contention is that but for the insertion made by hand without permission and behind the back of the Petitioners, Suit 28 could never have been decreed by giving possession to Respondent No. 1. It is for in challenge of such allegedly abusive process that the Petitioners filed the application under Order VI, Rule 16 of the CPC in the appellate proceedings, seeking striking out of these words from the Suit 28 proceedings.

8. Mr. Mayur Khandeparkar, Learned Counsel for Respondent No. 1 strongly counters the aforesaid premise on three counts. *First*, he would point to Issue Number 18 framed in Suit 28 to show that the issue explicitly framed was *whether the Plaintiffs were entitled to possession of the suit property*. He would submit that the issues had been framed on August 12, 1986. If the Petitioners had genuinely been of the view that there had been no prayer for possession then, they would have sought recasting of the issues on the ground that it was wrongly framed, in the purported absence of a reference to possession in the prayers.

9. *Second*, Mr. Khandeparkar would submit that the Respondent No. 1 had occasion to obtain a certified copy of the proceedings way back on August 10, 1990, a colour copy of which is tendered across the bar. This has been

noticed in the Impugned Order too. He would show that this certified copy taken way back in 1990 evidences the words “*and hand over possession*” in the very same handwriting inserted in the prayers. The suit was decreed in January 1991. Therefore, he would submit that the contention of the Petitioners about these words having been inserted behind the Petitioners’ back is fanciful and unbelievable. That an issue framed in 1986 was not challenged then would point to this change having potentially been made before filing on discovery of a typographical miss of such words, which is why it is signed on the margin.

10. *Third*, Mr. Khandeparkar would point to the articulation in the judgement dated January 7, 1991 on Issue Number 18, which would also explicitly point to the fact that the Petitioners had been permanently restrained from alienating the suit property in favour of any other person. The very fact that these Petitioners had been made party to the suit, he would contend, would show that the Plaintiffs in Suit 28 were aware of the fact that these Petitioners were in possession, and therefore, the suit was framed in a manner as to re-claim the possession. The words being inserted by hand would have well been an insertion after the typing was completed and this would have never surprised anyone since the issues were framed around such prayer and possession was in any case incidental to the prayer for specific performance having been allowed.

Analysis and Findings:

11. Having heard Learned Counsel for the parties and having examined the record with their assistance, to my mind it is apparent that the Impugned Order has well considered these very contentions that the parties presented, and has noted that it is not believable that the words which are said to have been inserted by hand were a result of abuse of the process of the Court. It was observed, that raising such an issue in appellate proceedings at this late stage, several decades after the suit was decreed, was untenable.

12. The Impugned Order takes note of the contentions of the parties and also deals with the colour photocopy of the very same certified copy of the plaint as of August 1990, which was also presented today to this Court. The Impugned Order has stated that it would not be proper to comment on another contention in the application made under Order VI, Rule 16 of the CPC, about Section 22 of the Specific Relief Act, 1963 ("***Specific Relief Act***"). The Learned District Judge has stated that the issue to be answered is whether there has been any manipulation or interpolation carried out by Respondent No. 1 when the suit proceedings had taken place way back in the late 1980s.

13. The submissions made by Mr. Khandeparkar on behalf of Respondent No. 1 are cogent and reasonable and point to how the Impugned Order

appears accurate in its conclusion with an eminently plausible reading of what transpired. It appears that the Petitioners are faced with the adjudication of Suit 28 being in line with the hand-written correction in the prayers, read with Issue No. 18 as framed, read with analysis of that issue in the judgement – all having been done with the Petitioners’ active participation. Therefore, three decades later, the Petitioners appear desirous of picking on the hand-written component of the prayer to somehow raise a controversy over alleged abuse of the process of the trial Court, with no explanation for how they did not raise the issue earlier and for all these years even during the Appeal.

14. In considering an application under Order VI, Rule 16 of the CPC, the Learned District Judge has rightly applied his mind to whether there was any abuse of the Court’s process patent and manifest from the record. On the contrary, the Petitioners’ contentions are what sound fanciful and unbelievable. Indeed, the interpretation of Section 22 of the Specific Relief Act has no place in the course of considering such an application. This is what the Learned District Judge has meant when the Impugned Order states that such issue can be considered in the course of the final decision of the Appeal. Therefore, in my opinion, the Learned District Judge has rightly rejected the application.

15. Having regard to the nature of the writ jurisdiction, and the stage at which the issue is being raised, namely, appellate proceedings, and that too nearly three decades after Suit 28 was adjudicated, I am of the view that this is not a fit case for any exercise of extraordinary jurisdiction under Article 227 of the Constitution of India.

16. *Prima facie*, the contemporaneous evidence alluded to by Learned Counsel for Respondent No. 1 would point to the fact that the finding by the Learned District Judge in the Impugned Order does not call for interference. *Prima facie*, the prayer as framed (including the correction by hand); the Issue No. 18 as framed; the analysis of the issue in the judgement; the absence of any protest to the framing of issues at the stage of the trial; and the silence thereafter until the Application was filed, all collectively point to it being impossible to hold that the Impugned Order is a product of perversity. On the contrary, these circumstances demonstrate that the Impugned Order contains an eminently reasonable and plausible view.

17. Merely because another view is being canvassed by the Petitioners at this stage, it need not follow that the events of the 1980s leading up to the judgement in 1991 can be called into question three decades later. I am deliberately refraining from returning a firm finding on the issue of interpreting Section 22 of the Specific Relief Act read with Section 55(1)(f) of

the Transfer of Property Act, 1882 (*“Transfer of Property Act”*), at this stage since the Learned Judge has left this facet to be considered in the course of finally hearing the Appeal.

18. Suffice it so say, the contention of Mr. Naik is that under Section 22(1) (a), the person seeking specific performance must ask the Court to grant possession in addition to specific performance and under Section 22(2), no relief may be granted unless specifically claimed. That the Petitioners had been made parties to the Suit 28 could have only meant that Respondent No. 1 was desirous of getting possession since it was in the Petitioners’ hands. The proviso to Section 22(2) too would permit the Court, at any stage, to amend the plaint to include such claim for possession if it seemed just to the Court.

19. One cannot speculate whether the hand-written correction was a correction before the plaint was filed, or whether it was permitted to be carried out across the bar without a specific order. When asked to point to the written statement of the Petitioners in Suit 28 to see if this contention had been taken, it was pointed out that the written statement is not part of the record of the writ proceedings and it has not been annexed. If the Petitioners were of the *bona fide* view that the prayer lacked in material particular, their written statement would have potentially dealt with this

issue. If their written statement dealt with this issue head on, this would not have been raised decades later. Even if their written statement did not deal with this issue, but Issue No. 18 was formulated to deal with the possession of the suit property being claimed by Respondent No.1, as Mr. Khandeparkar rightly points out, an application would have likely been made to strike out or correct Issue No. 18. None of this having been done, leads to a preponderance of probability that the prayer always contained the handwritten correction initialed in the margin, and now a red herring is being presented to deflect the course of the Appeal.

20. Therefore, I do not consider it necessary to deal with, at this stage, the ruling in *Prataprai Mehta*¹ cited by Mr. Khandeparkar to contend that implicit in the operation of Section 55(1)(f) of the Transfer of Property Act is an inherent inclusion of a right to possession, which relief the Court can indeed grant, even factoring in Section 22 of the Specific Relief Act. This is an issue best left to the Learned District Judge when hearing the Appeal and best left out of articulation when disposing of this Petition in the writ jurisdiction. The remarks in this judgement in this regard are solely in aid of explaining why no interference in exercise of the writ jurisdiction is warranted.

¹ *Prataprai Trambaklal Mehta vs. Jayant Nemchand Shah & Ors.* – 1996 SCC OnLine Bom 13

21. The view adopted in the Impugned Order is a reasonable and plausible one, calling for no interference in exercise of the writ jurisdiction. That the Impugned Order purports to postpone a final decision on the issue of interpreting Section 22 of the Specific Relief Act to the final stage of hearing the Appeal does not turn the needle in favour of the Petitioners, as canvassed by Mr. Naik. All the Impugned Order means is that the implications of Section 22 would not arise at this stage when the material available before the Court was adequate to conclusively put an end to the controversy sought to be raised over three decades after adjudication of Suit 28.

22. The ship has sailed, with a clear trail that calls for no interference on the premise of Order VI, Rule 16 of the CPC. Therefore, in my opinion, the Impugned Order rightly rejects the attempt at the appellate stage, to strike off a component of the pleadings in the plaint in Suit 28.

Conclusion and Costs:

23. In these circumstances, no case having been made out for interference with the Impugned Order, the Writ Petition is ***dismissed***. I am not imposing costs at this stage, but it shall be open to the Learned District Court to consider the costs expended in this round of litigation when dealing with costs at the stage of the final hearing of the Appeal.

24. All actions required to be taken pursuant to this order, shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]