



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.15421 OF 2025**

1. Subhash Vithal Kurhe (Lonari),
Age 60 years, Occu : Agriculturist,

2. Sunila Vithal Kurhe (Lonari),
Age 55 years, Occu : Agriculturist,
R/at Lauki Shirasgaon, Tal – Yeola,
District Nashik.

... Petitioners

versus

1. Anita Sitaram Andhale,
Age 54 years, Occu : Agriculturist,

2. Jayashri Dnyaneshwar Andhale,
Age 44 years, Occu : Agriculturist,

3. Jyoti Tanaji Andhale,
Age 38 Years, Occu : Agriculturist,

4. Kalindi Govind Nagare,
Age 34 years, Occu : Agriculturist,

All above R/at : Pachore Brk., Taluka Niphad,
District Nashik.

Through Power of Attorney Holder Shri Tajani
Devram Andhale,

Age 45 years, Occu – Agri. And Business,
R/at : Pachore Brk., Taluka – Niphad,
Dist. Nashik.

... Respondents

Mr. Girish Agrawal with Ms. Chitra Darekar, for Petitioners.

Mr. Balasaheb Deshmukh, for Respondents.

CORAM: N.J.JAMADAR, J.

**RESERVED ON : 2 DECEMBER 2025
PRONOUNCED ON : 17 DECEMBER 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 the judgment and order dated 29 October 2025 passed by the learned District Judge, Nashik, in Misc. Civil Appeal No.19 of 2025, whereby the appeal preferred by the Respondents – Defendants against an order dated 7 August 2025 passed by the Trial Court in RCS No.151 of 2025, came to be allowed by setting aside the said order, whereunder the Respondents – Defendants were restrained from causing obstruction to, or interference with, the peaceful possession of the Petitioners – Plaintiffs over the suit property, till the decision of the suit.

3. Though, the litigation has a chequered history, the background facts necessary for the determination of this Petition, can be summerized, as under :

3.1 Rayaji was the holder of the land bearing Gat No.66 admeasuring 9H 60R situated at Lauki, Shirasgaon, Tal. Yeola, Dist. Nashik (the suit property). Rayaji had four sons and two daughters, including Namdeo and Devram. Machindra, the vendor of the Respondents, represents Namdeo Branch. Plaintiff Nos.1 and 2 are the sons of Vithal, one of the five sons of Devram.

Machindra, the vendor of the Respondents, had instituted RCS No.61 of 2011 against the Petitioners seeking a decree of perpetual injunction to restrain the Petitioners from causing obstruction to the possession and enjoyment of the suit land by Machindra.

3.2 In the said suit, Machindra had preferred an application for temporary injunction. By an order dated 29 October 2012, learned Civil Judge was persuaded to partly allow the said application and restrain the Petitioners – Defendants therein, from causing obstruction to the possession of Machindra over the suit property, excluding the houses of the Defendants bearing No.190, 112, 210 and also from obstructing Machindra while cultivating the suit property, till the decision of the suit.

3.3 The Petitioners preferred Misc. Civil Appeal No.62 of 2012. By a judgment and order dated 15 July 2016, learned District Judge, Niphad, was persuaded to allow the appeal and set aside the order dated 29 October 2012 in RCS No.61 of 2011. Learned District Judge was of the view that the material on record, prima facie, indicated that since 1954-55, the Petitioners and their ancestors were in possession of the suit property.

3.4 Eventually, the Petitioners – Defendants in RCS No.61 of 2011, filed Written Statement and Counter Claim. The Petitioners also preferred an application to restrain Machindra from alienating the suit property or changing its nature. By an order dated 1 December 2022, learned Civil Judge rejected

the said application.

3.5 While RCS No.61 of 2011 awaited adjudication, Machindra executed a Registered Conveyance of the suit property in favour of the Respondents on 17 April 2025. The Petitioners – Plaintiffs, thus, instituted RCS No.151 of 2025 asserting, inter alia, that, on the strength of the said illegal Conveyance, the Defendants – purchasers threatened to dispossess the Plaintiffs.

3.6 In the said suit, the Plaintiffs sought a declaration that the Plaintiffs were the owners, and in possession, of the suit property, and, that the Sale Deed dated 17 April 2025 executed by Machindra in favour of the Respondents – Defendants, was illegal and void and did not bind the Plaintiffs. In the said RCS No.151 of 2025, the Plaintiffs filed an application for temporary injunction to restrain the Defendants from causing obstruction to the possession and enjoyment of the suit property by the Plaintiffs.

3.7 By an order dated 7 August 2025, the learned Civil Judge was persuaded to allow the application and restrain the Defendants from causing obstruction to, and interference with, the peaceful possession of the Plaintiffs over the suit property.

3.8 In an appeal preferred thereagainst, learned District Judge interfered with the exercise of discretion by the Trial Court and allowed the appeal. It was, inter alia, observed that the subsequent suit was required to be stayed in view of the pendency of RCS No.61 of 2011, as the matter in issue in the

instant suit was directly and substantially in issue in RCS No.61 of 2011. Secondly, the claim of the Plaintiffs of ownership over the suit property was yet to be adjudicated. Thirdly, though the mutation entries in the record of rights raised a presumption as to possession, yet, Machindra appeared to be the owner of the suit property. Thus, the learned District Judge was persuaded to set aside the order of temporary injunction in RCS No.151 of 2025.

3.9 Being aggrieved, the Plaintiffs have invoked the writ jurisdiction.

4. I have heard Mr. Agrawal, learned Counsel for the Petitioners, and, Mr. Balasaheb Deshmukh, learned Counsel for the Respondents, at some length. Learned Counsel took the Court through the pleadings before the Courts below and the various orders passed by the Courts in the proceedings between the Plaintiffs, on the one part, and, the vendors of the Respondents, on the other part, as well as the proceedings, *inter se*, children of Devram.

5. Mr. Agrawal, learned Counsel for the Petitioners, submitted that, the learned District Judge committed a manifest error in interfering with the discretionary order passed by the Trial Court. There was overwhelming material to show that the Plaintiffs were in possession and cultivation of the suit property. There was a judicial imprimatur to the Plaintiffs' claim of possession in the form of the judgment and order passed in Misc. Civil Appeal No.62 of 2012, whereby upholding the claim of the Plaintiffs of possession

over the suit property, injunction granted by the Trial Court in RCS No.16 of 2011 instituted by Machindra was set aside. The judgment and order in Misc. Civil Appeal No.64 of 2012 was never assailed, and, thus, attained finality.

6. In the face of the said orders, and, documents of unimpeachable character to show that the Plaintiffs were in possession of the suit property, the learned District Judge could not have interfered with the order passed by the Trial Court. Mr. Agrawal would urge, the learned District Judge lost sight of the jurisdictional limits in an appeal against the discretionary order.

7. Mr. Agrawal further submitted that the learned District Judge was not at all justified in holding that the suit instituted by the Plaintiffs was required to be stayed under the provisions of Section 10 of the Code of Civil Procedure, 1908. The cause of action was completely different. Taking the Court through the copy of the Sale Deed, Mr. Agrawal would urge that, though in the Sale Deed, a reference was made to the pendency of RCS No.61 of 2011, and the order dated 29 October 2012 passed by the Trial Court, yet, with an oblique motive, no reference was made to the order passed by the learned District Judge in Misc. Civil Appeal No.62 of 2012 dated 15 July 2016, whereby the said order of temporary injunction was set aside. Since the Respondents – Defendants threatened to dispossess the Plaintiffs on the basis of such Sale Deed, which was executed with a design to defeat the rights of the Plaintiffs, the Plaintiffs were constrained to institute RCS No.151 of 2025. In this

backdrop, the provisions contained in Section 10 of CPC were not at all attracted, urged Mr. Agrawal.

8. In any event, even if it is assumed that the suit was required to be stayed under the provisions of Section 10 of the Code, yet, there is no impediment for the Court to grant interim relief, even in such a suit. To this end, Mr. Agrawal placed a very strong reliance on the judgment of a learned Single Judge of this Court in the case of **Breach Candy Swimming Bath Trust and Ors. V/s. Dipesh Mehta and Ors.**¹.

9. Mr. Agrawal would further urge that, the learned District Judge also committed an error in holding that the mutation entries which indicate that the Plaintiffs are in possession and cultivation of the suit property are of no avail to the Plaintiffs. The mutation entries, prima facie, raised presumption in regard to the possession, and, at the stage of grant of temporary injunction, the Court was required to examine the factum of possession and not its legality.

10. To bolster up this submission, Mr. Agrawal placed reliance on a judgment of the Supreme Court in the case of **The State of A.P. and Ors. V/s. M/s. Star Bone Mill & Fertiliser Co.**², and, a judgment of a learned Single Judge of this Court in the case of **Mahadeo Kashiba Waghmode & Ors. V/s. Kallappa Shidilinga Waghmode & Anr.**³

1 2016(7) ALL MR 330

2 2013 ALL SCR 1073

3 2016(1) ALL MR 404

11. Lastly, Mr. Agrawal would urge, the Respondents – Defendants cannot have a better title and rights than Machindra. Since the Appellate Court in Misc. Civil Appeal No.64 of 2012 had negated the claim of Machindra as to the possession over the suit property, the Respondents are bound by the said order.

12. In opposition to this, Mr. Deshmukh, learned Counsel for the Respondents would submit that, the case of the Plaintiffs suffered from the vice of gross suppression of facts and malafide. The Plaintiffs did not approach the Court with clean hands and suppressed the facts which could not have been suppressed. In fact, the Plaintiffs had instituted a suit being RCS No.127 of 2007 against Machindra for a declaration that the Plaintiffs and Vithal, who was impleaded as Defendants No.2 in the said suit, were the owners of the suit property and Machindra had no right, title and interest therein. The said suit was dismissed.

13. Conversely, Vithal, father of the Plaintiffs, had instituted a suit against his brother Shankar for partition and separate possession of the properties allotted to Devram and, in the said suit, a categorical statement was made that Kashinath, father of Machindra, was the owner of the suit property and the suit property was never allotted to Vithal in partition.

14. Taking the Court through the pleadings and the judgment and decree passed in SCS No.182 of 1996, Mr. Deshmukh would urge that the Plaintiffs

cannot be permitted to draw any mileage from the judgment and order in Misc. Civil Appeal No.62 of 2012. It was submitted that the interim orders passed in the proceedings do not operate as res-judicata. To bolster up this submission, Mr. Deshmukh placed reliance on a judgment of the Supreme Court in the case of **Arjun Singh V/s. Mohindra Kumar**⁴.

15. Mr. Deshmukh would further urge that the second suit for declaration of ownership over the suit property, after dismissal of RCS No.127 of 2007 was clearly barred. Thus, the instant suit for perpetual injunction was also barred. To lend support to this submission, Mr. Deshmukh placed reliance on the judgment of the Supreme Court in the case of **Padhiyar Prahladji Chenaji (deceased) through LRs v/s. Maniben Jagmalbhai (deceased) through LRs and Ors.**⁵

16. Lastly, Mr. Deshmukh would urge, the Respondents on the basis of the registered instrument have become true owner of the suit property. No injunction can be granted against the true owners, in the absence of any semblance of title over the suit property. A very strong reliance was placed by Mr. Deshmukh on the judgment of the Supreme Court in the case of **Maria Margarida Sequeria Fernandes and Ors. V/s. Erasmo Jack De Sequeria (dead) through LRs and Ors.**⁶.

17. The aforesaid submissions now fall for consideration. At the outset, it

4 AIR 1964 SC 993

5 2022 0 Supreme (SC) 197

6 2012 0 Supreme (SC) 246

is necessary to note the limits of the jurisdiction of the Appellate Court in an appeal against the discretionary order. It is trite, an appeal against the discretionary order is an appeal on principle. It is not open for the Appellate Court to reevaluate the material and take a different view of the matter and substitute its view for the one recorded by the Trial Court. The Appellate Court can legitimately intervene if the Trial Court's order suffers from arbitrariness or perversity or discretion has been exercised in violation of 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.

18. 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.**⁷ 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

7 1990 (supp) SCC 727

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 Joseph⁸ :

“... These principles are well established, but as has been observed by Viscount Simon in Charles Osenton & 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)

19. In the case of **Seema Arshad Zaheer and Ors. V/s. Municipal Corporation of Greater Mumbai and Ors.**⁹ the Supreme Court expounded the principles which govern the interference by the appeal Court in the

8 (1960) 3 SCR 713

9 (2006) 5 SCC 282

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)

20. Another three Judge Bench of the Supreme Court in the case of **Skyline Education Institute (India) Pvt. Ltd. V/s. S.L.Vaswani and Anr.**¹⁰ after referring to the previous precedents, culled out the principles which govern the exercise of appellate jurisdiction against discretionary orders, as under :

“22. The ratio of the abovenoted judgments in that once the Court of first instance exercises its discretion to grant or

¹⁰ (2010) 2 SCC 142

refuse to grant relief of temporary injunction and the said exercise of discretion is based upon objective consideration of the material placed before the Court and is supported by cogent reasons, the appellate court will be loath to interfere simply because on a de novo consideration of the matter it is possible for the appellate Court to form a different opinion on the issues of prima facie case, balance of convenience, irreparable injury and equity.” (emphasis supplied)”

21. In the light of the aforesaid position in law, it has to be seen whether the learned District Judge was justified in interfering with the discretionary order passed by the Trial Court. The fact that in RCS No.61 of 2011, the Plaintiffs (Defendants therein) had filed a Counter Claim and sought declaration of title over the suit property and the relief of injunction to restrain Machindra from causing obstruction to their possession and enjoyment of the suit property, weighed with the learned District Judge in holding that “this is a classic case of overlapping civil suits over the same property, where the issue of title and possession is subjudice in earlier suit”.

22. The Trial Court, in contrast, was of the view that, as the both the suits were based on distinct causes of action, the provisions contained in Section 10 of the Code would not be attracted. At any rate, the Plaintiffs had an option of either impleading the Defendants in the former suit or institute a separate suit; and, there was no illegality in the exercise of second option by the Plaintiffs.

23. In the circumstances of this case, and, especially, having regard to the stage of the proceedings, the issue of application of the provisions contained in Section 10 of the Code, did not appear to be of decisive significance. Mr. Agrawal was justified in canvassing a submission that, even where the subsequent suit is stayed, in a given case, to balance equities, the Court is not denuded of the power to grant interim relief.

24. In the case of **Breach Candy (supra)**, on which reliance was placed by Mr. Agrawal, a learned Single Judge of this Court enunciated that the jurisdiction of the Civil Court being plenary in nature, if it is seized of a suit, the provisions of Order XXXIX Rule (1) and (2) and Section 151 are clearly attracted, and whether or not the Court is in a position to conduct the trial, it can always grant interim relief by exercising these powers. On this principle, even where the trial of a suit is stayed under Section 10 of the Code, the Courts exercise these powers and grant interim relief.

25. On the aspect of the factum of possession, the judgment of the learned District Judge in Misc. Civil Appeal No.62 of 2012, whereby the injunction granted in favour of Machindra, was set aside, seems to govern the rights of the Plaintiffs and Machindra, the vendor of the Defendants, during the pendency of the suit instituted by Machindra. In the said judgment, the learned District Judge has categorically recorded that, prima facie, it appeared that Machindra failed to prove that he was in possession of the suit

property. On the contrary, the documents on record, prima facie, show that since 1954-55, the Defendants and their ancestors were in possession of the suit property. All the parameters of grant of interim injunction were found in favour of the Plaintiffs. Incontrovertibly, the said order attained finality.

26. In the impugned order, learned District Judge was not prepared to give importance to the entries in the revenue record. Learned District Judge went on to observe that the registered instrument stands on a higher pedestal and the acquisition of title by the Respondents would be subservient to the eventual decree that may be passed in RCS No.61 of 2011. Therefore, no injunction can be granted against the Respondents.

27. Learned District Judge, in the considered view of this Court, approached the controversy from an incorrect perspective. Learned District Judge lost sight of the fact that in the order impugned in appeal, the Defendants were restrained from causing obstruction to or interference with the peaceful possession of the Plaintiffs over the suit property. Implication of the order passed by the Trial Court was only to protect the possession of the Plaintiffs. Prima facie, in the face of the earlier order passed in Misc. Civil Appeal No.64 of 2012 and entries in the revenue record, which show the possession of the Plaintiffs over the suit property, learned District Judge could not have interfered with the discretionary order passed by the Trial Court on

the premise that the possession of the Plaintiffs over the suit property was not legal.

28. This propels me to the submissions of Mr. Deshmukh based on the orders passed in the previous proceedings between Vithal and his brother Shankar. In SCS No.182 of 1997, Vithal had deposed that in the year 1982, there was a partition amongst the sons of Devram. The family had no land at Louki. He was cultivating the land bearing Gat No.66 (the suit land), which was owned by Kashinath, father of Machindra, as a cultivator. Eventually, in SCS No.182 of 1996, learned Civil Judge returned a finding that the suit property did not belong to Vithal and it was not part of the joint family property of Devram.

29. Even if the aforesaid deposition and the judgment in SCS No.182 of 1996 are taken at their face value, it becomes abundantly clear that Vithal, while denying the title over the suit property, categorically asserted that he was in possession of the suit property as a cultivator thereof, since 1967. The claim of possession over the suit property finds, prima facie, support in the entries in the revenue record. Resultantly, the submission of Mr. Deshmukh that, on account of the discovery of new facts and material, the order in Misc. Civil Appeal No.64 of 2012 does not preclude the Court from taking a different view of the matter at an interim stage, does not merit acceptance.

30. The decision in the case of **Arjun Singh V/s. Mohindra Kumar (supra)**, may not assist the Respondents – Defendants. In the said case, the Supreme Court enunciated that the principle underlying the distinction between the rule of res judicata and a rejection on the ground that no new facts have been adduced to justify a different order is vital. If the principle of resjudicata is applicable to the decision on a particular issue of fact, even if fresh facts were placed before the Court, the bar would continue to operate and preclude a fresh investigation of the issue, whereas in the other case, on proof of fresh facts, the court would be competent, nay,, would be bound to take those into account and make an order conformably to the facts freshly brought before the court.

31. In the case at hand, as noted above, the factum of possession of the predecessor in title of the Plaintiffs does not get displaced by the discovery of fresh facts. The deposition of Vithal in the previous proceedings, even if taken at par, lends support to the claim of possession over the suit property as a cultivator.

32. The aforesaid factors render the reliance on the decisions of **Padhiyar Prahladji Chenaji (deceased) through LRs v/s. Maniben Jagmalbhai (deceased) through LRs and Ors. and Maria Margarida Sequeria Fernandes and Ors. V/s. Erasmo Jack De Sequeria (dead) through LRs and Ors. (supra)** inapposite. In **Padhiyar (supra)**, case, it was enunciated

that, once a suit is held not maintainable, no relief of injunction can be granted. Injunction may be granted even against the true owner of the property only when a person seeking relief is in lawful possession and enjoyment of the property and also legally entitled to be in possession not to dispossess him, except in due process of law.

33. In **Maria Margarida Sequeria (supra)**, it was held that the Respondents' suit for injunction against the true owner was not maintainable, when it was established beyond doubt that the Respondents was only a care taker and he ought to have given possession of the premises to the true owner of the suit property on demand. As the respondents did not claim any title over the suit property, and, he had not filed any proceedings disputing the title of the Appellant.

34. In the case at hand, there is prima facie material to indicate that the predecessor in title of the Plaintiffs has been in possession of the suit property lawfully. In the previous proceedings, the predecessor in title of the Plaintiffs had asserted his claim of possession over the suit property, and reliefs have also been granted in favour of the Plaintiffs and against the vendors of the Respondents.

35. In the totality of the circumstances, in my considered view, the learned District Judge exceeded the jurisdictional limits in interfering with the discretionary order passed by the Trial Court.

36. Resultantly, the Writ Petition deserves to be allowed.

37. Hence, the following order :

ORDER

(i) The Writ Petition stands allowed.

(ii) The impugned order dated 29 October 2025 in Misc. Civil Appeal No.19 of 2025 passed by the learned District Judge, Yeola, Nashik, stands quashed and set aside, and, the order dated 7 August 2025 passed by the Trial Court on an application for temporary injunction (Exh.5) in RCS No.151 of 2025, stands restored.

(iii) Rule made absolute to the aforesaid extent.

(iv) No costs.

(N.J.JAMADAR, J.)

38. At this stage, Mr. Deshmukh, the learned Counsel for the Respondents seeks stay to the execution and operation of this order.

39. In the light of the view which this Court is persuaded to take, the Court does not find any justifiable reason to stay the execution and operation of this order.

40. The oral application for stay stands rejected.

(N.J.JAMADAR, J.)