

Kavita S.J.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INTERIM APPLICATION NO.2143 OF 2025

IN

SUIT NO.130 OF 2025

WITH

SUIT NO.130 OF 2025

Nagina Ramsagar Choube & Ors.,

**...Applicants/
Org. Plaintiffs**

Versus

Ajay Mohan & Ors.,

...Defendants

Mr. Atul Damle, Senior Counsel a/w Dr. Pawan K. Pandey, Ms. Anita Dwivedi, Mr. Ashok Gupta, Ms. Suman Gupta and Mr. Rakesh Shukla i/b Chayderman & Co. for the Plaintiffs.

Mr. Darius Khambata, Senior Counsel a/w Mr. Karl Tamboly, Mr. Paras Gosar, Mr. Tushar Hathiramani, Mr. Samit Shukla, Mr. Siddharth Shah, Ms. Sayali Diwadkar & Mr. Anuj Savla i/b Trilegal for Defendant No.1.

Mr. Navroz Seervai, Senior Counsel a/w Mr. Yash Momaya, Mr. Samit Shukla, Mr. Siddharth Shah, Mr. Anuj Savla & Ms. Sayali Diwadkar i/b Trilegal for Defendant Nos. 2 & 3.

CORAM : R.I. CHAGLA, J.

DATED : 24th JUNE, 2025.

ORDER :

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1. Mr. Atul Damle, learned Senior Counsel appearing for the Applicants/Plaintiffs has moved for ad-interim relief in the above Interim Application.

2. By an Order dated 16th June, 2025, this Court had recorded the statement of the learned Counsel appearing for the Applicants/Plaintiffs that the arguing Counsel was unavailable. An amendment of the Interim Application had been sought as the final prayers in the Plaint had inadvertently been included in the Interim Application. Accordingly, the amendment was allowed.

3. It is pertinent to note that by the said order, this Court had noted a preliminary objection which had been raised on behalf of the Defendants regarding the maintainability of the Suit on the ground that there is gross suppression of the earlier proceedings instituted by the Plaintiffs including the fact of orders passed therein allowing withdrawal of proceedings and passing of Consent Decree in terms of Consent Terms filed therein.

4. Mr. Khambata, learned Senior Counsel appearing for Defendant No.1 had tendered a Compilation of Documents containing the earlier proceedings and orders passed by this Court and which he has submitted, had been suppressed in the captioned Suit. Accordingly, the matter has been placed today for considering the preliminary issue raised by the Defendants.

5. Mr. Atul Damle has referred to the prior proceedings and orders passed therein which the Defendants have submitted were suppressed from this Court. He has submitted that there is no material suppression in the Plaint filed in the captioned Suit.

6. Mr. Damle has submitted that with regard to Suit No.4962 of 2006, the Suit had been filed before the City Civil Court at Mumbai and the Plaintiff Nos. 1 to 3 therein are the Defendant Nos. 1 to 3 in the present Suit. The Defendant Nos. 2, 4A & 4B are the Plaintiff Nos. 1, 2 & 3 in the present Suit. He has submitted that the said Suit had been withdrawn by the Plaintiffs therein i.e. Defendant Nos. 1 to 3 herein against the Plaintiffs in the present Suit.

7. Mr. Damle has then referred to Suit No. 1433 of 2011 which had been filed in this Court by the Plaintiff No.2 therein who is the Plaintiff No.1 in the present Suit; the legal heirs of Plaintiff No.3 therein who is the Plaintiff No.2 & 3 in the present Suit; the legal heir of Plaintiff No.4 therein who is Plaintiff No.4 in the present Suit. The Defendants therein are the Defendants in the present Suit. He has submitted that there has been no suppression of the filing of this Suit. In any event, the Plaintiff Nos. 2 and 4 in the said Suit were

transposed as Defendant Nos. 4 and 5 vide Order dated 16th May, 2013 in Notice of Motion No.1882 of 2011 in Suit No.1433 of 2011. The Plaintiff No.1 was transposed as Defendant No.4 in the said Suit. He has submitted that Suit No.1433 of 2011 was withdrawn with liberty to file fresh Suit vide Order dated 9th January, 2014 in Notice of Motion No.1882 of 2011 in Suit No.1433 of 2011.

8. Mr. Damle has then referred to Suit (L) No.1234 of 2014 which the Defendants alleged has been suppressed in the captioned Suit. He has submitted that in the said Suit Defendant Nos. 1 to 3 are the Defendant Nos. 1 to 3 in the present Suit. The Defendant No.4 is Plaintiff No.1 in the present Suit. The legal heir of Defendant No.5 is the Plaintiff No.4 in the present Suit. The legal heirs of Defendant No.9 is the Plaintiff Nos. 2 & 3 in the present Suit. He has submitted that a fresh Suit had been filed after withdrawal of the said Suit. He has referred to the fact that the Plaintiff No.1 in the present Suit had been transposed as Defendant No.4. Further, the predecessor of the Plaintiff No.4 in the present Suit had been transposed as Defendant No.5 in the said Suit and the predecessor of the Plaintiff No.2 & 3 in the present Suit had been transposed as Defendant No.9 in the said Suit.

9. Mr. Damle has thereafter referred to Suit No.13214 of 2022 which the Defendants allege has been suppressed in the captioned Suit. He has submitted that the Defendant Nos. 1 to 3 in the said Suit are Defendant Nos. 1 to 3 in the present Suit and Defendant No.12 in the said Suit is the Plaintiff No.1 in the present Suit. The Defendant No.11B & 11C in the said Suit are Plaintiff Nos.2 & 3 in the present Suit. He has submitted that the Suit had been withdrawn after filing of the Consent Terms in Suit No.4692 of 2006 before the City Civil Court, Mumbai by the Plaintiffs.

10. Mr. Damle has referred to the Consent Decree in Suit No.4692 of 2006 which had disposed of the said Suit vide Order dated 6th November, 2024. He has submitted that the Plaintiffs in the said Suit are Defendant Nos. 1 to 3 in the present Suit. He has submitted that none of the signatories of the Consent Terms were parties in the present Suit except the Defendants. This submission upon being countered by the learned Senior Counsel for the Defendants has been given up.

11. Mr. Damle has thereafter submitted that the Plaintiff No.2 in the captioned Suit was in fact a signatory to the Consent

Terms entered in the said Suit.

12. Mr. Damle has submitted that in Suit No.4962 of 2006 (“2006 Suit”), there were no ad-interim / interim relief granted prior to the withdrawal of the said Suit by the Plaintiffs therein i.e. Defendant Nos. 1 to 3 against the Plaintiffs in the present Suit. He has referred to the orders which had been passed in the said Suit from time to time and has submitted that the fact of the said Suit having been withdrawn against the Plaintiffs herein will not come in the way of the Plaintiffs seeking relief in the present Suit.

13. Mr. Damle has referred to the pleadings in the Interim Application as well as the Plaint filed in the present Suit and has submitted that Plaintiffs have not given up their possessory rights to the Suit property. He has also referred to the evidence recorded in Suit No.4962 of 2006. He has submitted that in the cross examination the admission of the Director of the Defendant No.2 therein was recorded which was fatal. In view thereof, the Defendants in the present Suit who were the Plaintiffs therein faced with the situation decided to unconditionally withdraw the Suit and the claim against the present Plaintiffs and the Suit property. He has

referred to the Order dated 6th February, 2025 passed by the City Civil Court. He has submitted by the said order the withdrawal of the Suit by the present Defendants has been recorded.

14. Mr. Damle has submitted that upon withdrawal of the Suit, the Defendant No.1 as original owner and Defendant Nos. 2 and 3 claimed alleged rights under Deed of Conveyance dated 23rd December, 2021 as far as the Suit property is concerned. He has submitted that these rights stand withdrawn by the withdrawal of the 2006 Suits against the present Plaintiffs whose rights to the Suit Property by virtue of adverse possession and under prescription stands admitted by the present Defendants. He has submitted that the ground made out for seeking ad-interim relief is that the Applicants apprehend that Defendant Nos. 2 and 3 are in the process of alienating, dealing with and / or creating third party rights in the Suit property to the detriment of the aforementioned rights of the Applicants. He has submitted that the cause of action for filing of the Suit arose on 6th February, 2025 when the Defendants herein and Plaintiffs therein unconditionally withdrew their Suit and claim against the possessory rights of the Plaintiffs herein.

15. Mr. Damle has submitted that the cause of action also arose on 6th June, 2024 when the structures of the Plaintiffs herein were illegally demolished and they were dispossessed and the right of the Plaintiffs herein to seek restoration of possession under the Specific Relief Act arose. He has submitted that the cause of action of the Plaintiffs herein continued to seek declaration about their possessory rights as they having perfected their title by adverse and uninterrupted possession to the very knowledge of the present Defendant No.1 and their predecessor in title. This also by virtue of Agreement for Sale dated 23rd October, 1969 executed in their favour by the present Defendant No.1.

16. Mr. Damle has accordingly pressed for ad-interim relief, in particular by way of temporary injunction restraining the Defendant No.3 from in any manner dealing with the Suit property and / or claiming benefit therefrom or claiming to have become owner of the said Suit property as per Conveyance Deed dated 23rd December, 2020. Further consequential relief has been sought including directing the Defendants to maintain status quo in respect of the Suit property.

17. Mr. Khambata, learned Senior Counsel appearing for the Defendant No.1 has referred to the prayers in the captioned Suit. He has submitted that the Plaintiffs have sought declaration as owner by adverse possession of the Suit property. Further prayer has been sought declaring the Deed of Conveyance dated 23rd December, 2020 executed by Defendant Nos. 1 with Defendant No.3 as illegal, bad in law and not binding on the Plaintiffs. There is a prayer for restoration of the possession of the Plaintiffs to the Suit property. Further, a prayer directing the Defendants to reconstruct and restore the Suit property as it was before it was demolished on 6th June, 2024 and a permanent injunction restraining the Defendants from interfering with the Plaintiffs possession after restoration and / or claiming or receiving any benefit from the Suit property. There is also consequential relief sought.

18. Mr. Khambata has referred to certain material facts which have a bearing on the maintainability of the present Suit. He has submitted that the erstwhile owner of the Larger Property viz. Mr. Bhupal Sharma had sold and conveyed the Larger Property to Mrs. Tara Swaroop, mother of present Defendant No.1. Thereafter, by a Gift Deed dated 20th March, 1968 Mrs. Tara Swaroop gifted the

Larger Property to Defendant No.1.

19. Mr. Khambata has referred to the claim in the Plaint which is with regard to the Agreement for Sale dated 23rd October, 1969 executed by the Defendant No.1 in favour of Plaintiff No.1 and other joint owners for sale of the Larger Property for a total consideration of INR 90,000/-. There is a claim made by the Plaintiffs that an amount of INR 80,000/- had been received as part consideration. The balance consideration INR 10,000/- was payable to the Defendant No.1 on execution of the Conveyance Deed.

20. Mr. Khambata has submitted that the Plaintiffs only have a photocopy of the purported 1969 Agreement. The alleged original is claimed to have been lost by the Plaintiffs. The alleged 1969 Agreement is not registered. No conveyance has been executed till date. He has referred to the fact that Defendant No.1 has consistently disputed and denied the execution as also the validity of the alleged 1969 Agreement on the basis that:(a) it is a forgery; (b) Defendant No. 1 has not executed the same; (c) Defendant No. 1 has not received any consideration thereunder; and (d) Defendant No. 1 was a minor when the alleged 1969 agreement is said to have been

executed.

21. Mr. Khambata has referred to the fact that the Plaintiff No.1 and some of other claimants under the alleged 1969 Agreement had made an application before the revenue authorities for mutation on the basis of their claim of being in possession. Orders dated 23rd March, 1984 and 18th December, 1985 had been passed levying N.A. Assessment and fine. The Plaintiff No.1 and other claimants allegedly made payment. He has submitted that it is pertinent to note that the said Orders levying N.A. Assessment and fine records that the land stands in the name of Defendant No.1. It records that the alleged unauthorized user is from 1982, and the person responsible for the unauthorized user could not be identified. The said order was set aside in Appeal by an Order dated 10th March, 2011.

22. Mr. Khambata has referred to the claim made in the Plaint that one Shantilal Dand, a broker approached Plaintiff No.1 and the other claimants offering to acquire the Larger Property for Defendant No.3. The original papers were shared with Mr. Dand and Mr. Dand back-tracked, and instigated Defendant No.1 to challenge

the Order dated 18th April, 1984 by which the District Collector directed the name of Plaintiff No.1 and other claimants to be entered in the revenue records in the other rights column, pursuant to the alleged 1969 Agreement.

23. Mr. Khambata has referred to the fact that the Defendant No.1 had filed an Appeal in 1985 challenging the said Order dated 18th April, 1984. He has submitted that the Appeals were allowed vide Order dated 15th October, 1985 and the said Order dated 18th April, 1984 was set aside. The Plaintiff No.1 and other claimants' names were directed to be deleted from the other rights column. Aggrieved by the said Order dated 15th October, 1985, the Plaintiff No.1 and other claimants filed Appeal which was dismissed by an Order dated 19th July, 1991.

24. Mr. Khambata has submitted that the fact of the Plaintiff No.2 and other claimants filing an application for entering their names in the other rights column on 28th January, 1987 and the fact that the application was rejected, upon holding that the Applicants have not established their physical possession, has been suppressed by the Plaintiffs in the present Suit.

25. Mr. Khambata has submitted that the fact of the Development Agreement having been entered into between Defendant No.2 and Defendant No.3 dated 21st December, 2000 pursuant to which Defendant No.3 was put in possession of the Larger Property has also been suppressed by the Plaintiff in the present Suit.

26. Mr. Khambata has referred to the fact of the Plaintiff No.1 and other claimants having filed the Revision Application before the Hon'ble Chief Minister (holding charge as Revenue Minister) on 3rd October, 2004 challenging the Order dated 19th July, 1991. The matter had been remanded back to the Deputy Director of Land Records for fresh hearing.

27. Mr. Khambata has referred to the Remand Application filed by the Plaintiff No.1 and other claimants before the Deputy Director of Land Records being Appeal No.SR/700 of 2005. He has submitted that the Remand Application was heard and allowed and the said Order dated 18th April, 1984 was reinstated / upheld and the names of Plaintiff No.1 and other joint owners were retained in the revenue records in the other rights column by Order dated 13th

December, 2005.

28. Mr. Khambata has submitted that the fact that by subsequent Order dated 19th August, 2006 passed by the Additional District Deputy Collector the Order dated 23rd March, 1984, was set aside on the basis that the claimants were not found on the land and were therefore not in possession has also been suppressed by the Plaintiffs.

29. Mr. Khambata has submitted that on 22nd December, 2006 the Defendant No.3 had filed a Revision Application before the Hon'ble Revenue Minister challenging the said Order dated 13th December, 2005 and upon which the Hon'ble Minister remanded the matter back to the Deputy Director of Land Record for re-hearing. Thereafter, the Deputy Director of Land Records dismissed the Appeal filed by the claimants under the alleged 1969 Agreement, directing them to approach the appropriate Civil Court for their claims.

30. Mr. Khambata has referred to Suit No.4962 of 2006 ("2006 Suit") filed by the Defendants before the City Civil Court seeking *inter alia* a declaration that the claimants under the alleged 1969 Agreement have no right, title or interest in respect of the

Larger Property and further seeking a declaration that the alleged 1969 Agreement is bad in law and void. He has referred to the fact that interim relief was rejected on the ground that the alleged 1969 Agreement was not challenged. The Plaint was thereafter amended to include this challenge.

31. Mr. Khambata has submitted that the MCGM had issued a No Objection Certificate (“NOC”) to Mr. Suhas Joshi, Architect, for erection of temporary labour hutments at the Larger Property on 24th April, 2007. He has submitted that Mr. Suhas Joshi is the Architect of Defendant No.3. The NOC was initially for a period of six months, but came to be extended from time to time.

32. Mr. Khambata has submitted that the Plaintiffs have suppressed the Suit No.1433 of 2011 (“2011 Suit”) which had been filed before this Court by the Plaintiff Nos. 1, 2 and 3 and Plaintiff No.4’s predecessor (father) alongwith other Claimants seeking (i) a declaration that they are the owners and are in possession; (ii) that the alleged 1969 Agreement is valid, binding and subsisting and that the same be performed; amongst other reliefs. He has submitted that the filing of the Suit has been deliberately suppressed by the Plaintiffs

herein. This is in view of the variance of the claims made in the present Suit as that in the 2011 Suit. He has submitted that in the 2011 Suit the Plaintiffs claimed to be in possession since 1964, prior to the purported 1969 Agreement, whereas in the present Suit they claim to have been put in the possession upon execution of the alleged 1969 Agreement. Further, in the present Suit it is claimed that the Plaintiffs and other claimants were dispossessed on 6th June, 2024, whereas in the 2011 Suit the Plaintiffs and other claimants claim to have been dispossessed between 2006 and 2010. Further, in that Suit no claim for adverse possession is made which has been claimed in the present Suit.

33. Mr. Khambata has submitted that by an ad-interim Order dated 22nd July, 2011 ad-interim relief in the Notice of Motion filed in 2011 Suit was rejected by this Court on the basis of the alleged date of dispossession being 19th August, 2006. This order has been suppressed in the present Suit. Further, this Court by an Order dated 9th January, 2014 permitted the withdrawal of the 2011 Suit with liberty to file a fresh Suit in respect of the subject matter of the 2011 Suit in view of a formal defect in the Suit. This order has also been suppressed in the present Suit. He has submitted that the liberty

granted by this Court is in respect of the same subject matter and not to file proceedings on the basis of a new case of alleged adverse possession.

34. Mr. Khambata has submitted that Suit No.305 of 2015 [Suit (L) No.1234 of 2014] (“2014 Suit”) has been suppressed by the Plaintiffs. This Suit had been filed by Shankarrao Pawar, one of the claimants under the alleged 1969 Agreement, seeking (i) specific performance of the alleged 1969 Agreement; (ii) handover of possession; amongst other reliefs. The Plaintiff Nos. 1, 2 and the father of Plaintiff Nos.3 and 4 are Defendants to the 2014 Suit. He has submitted that there is also variance in the claims made in the present Suit as that made in the 2014 Suit. He has submitted that in the present Suit, the Plaintiffs claim that in part performance of the purported 1969 Agreement, the Defendant No.1 placed the claimants into possession, whereas in the Suit in 2014 Suit, the Plaintiffs claim to be in possession since 1964 i.e. prior to the alleged 1969 Agreement. Further, in the present Suit the Plaintiffs claim that they were dispossessed on 6th June, 2024, whereas in the 2014 Suit they claim to have been dispossessed between in 2010. There is also no claim of adverse possession in the 2014 Suit.

35. Mr. Khambata has referred to the Order dated 31st July, 2014 passed by the Assistant Commissioner, S Ward, MCGM, revoking the permission granted to Defendant No.3 for construction of temporary labour hutments. He has submitted that the temporary labour hutments were erected by Defendant No.3 in 2007 which came to be demolished in June 2024. The Plaintiffs have made a false claim in the Plaint relying on media reports of that time, i.e. they who were dispossessed.

36. Mr. Khambata has submitted that by a registered Deed of Conveyance dated 23rd December, 2020 the Defendant No.1 conveyed the Larger Property to Defendant No.3.

37. Mr. Khambata has referred to a Consortium Agreement dated 1st September, 2021 entered into between Plaintiff Nos. 1 to 4, some of the other claimants under the alleged 1969 Agreement and one Sainik Infrastructure India Limited ("Sainik"), a company having its registered office in Lucknow. He has submitted that the Consortium Agreement has been suppressed by the Plaintiffs knowing fully aware that under this Agreement (i) Defendant No.1's ownership of the Larger Property is recognized; (ii) further, the

Plaintiff Nos. 1 to 4 and other claimants claim is under the alleged 1969 Agreement and not by way of adverse possession; (iii) a Sale Deed is contemplated to be obtained from Defendant No.1; (iv) the property is in the shape of encroached and disputed land; (v) possession is contemplated to be taken from Defendant No.1 and encroachers. He has referred to the relevant clauses in the Consortium Agreement in this context.

38. Mr. Khambata has referred to a Memorandum of Understanding (“MoU”) dated 1st September, 2021 entered into at Lucknow between Sainik and Plaintiff No.1 pursuant to the Consortium Agreement. He has submitted that similar MoUs were entered into with other claimants under the alleged 1969 Agreement. The MoUs have been suppressed by the Plaintiff in the present Suit. The basis for the MoU is also the alleged 1969 Agreement, the acknowledgment that Defendant No.1 was the owner. It is further recorded therein that the “Third Payment” due would be paid only after an order is passed granting injunction or status quo against the Deed of Conveyance dated 23rd December, 2020.

39. Mr. Khambata has submitted the fact of Defendant No.3’s

name being mutated in the revenue records pursuant to the Deed of Conveyance dated 23rd December, 2020, on 3rd January, 2022 has also been suppressed by the Plaintiffs.

40. Mr. Khambata has submitted that there is material suppression of Suit No.504 of 2023 (“2022 Suit”) which had been filed by Plaintiff No.2 and some of the other claimants under the alleged 1969 Agreement before this Court seeking cancellation of the Deed of Conveyance dated 23rd December, 2020. The Plaintiff Nos.1, 3 and 4 are Defendants to the 2022 Suit. He has submitted that in the Plaint filed in the 2022 Suit, the claim made is that subsequent to the execution of the alleged 1969 Agreement, the Defendant No.1 put the claimants into possession. This is at variance with the claim in the present Suit where the Plaintiffs claim to be in possession since 1964, prior to the alleged 1969 Agreement. Further, the claim of the Plaintiffs and other Claimants in the 2022 Suit is that they were dispossessed between in 2010. Whereas in the present Suit, the Plaintiffs claim is that they were dispossessed on 6th June, 2024. He has submitted that no claim of adverse possession is made in 2022 Suit.

41. Mr. Khambata has referred to the Consent Terms dated 8th October, 2024 filed in the 2006 Suit. He has submitted that the Consent Terms were between the Defendant Nos. 1 to 3 (as Plaintiffs therein) and several of the claimants, as Defendants therein, including Plaintiff No.2 in the present Suit. He has submitted that the Plaintiff No.2 was Defendant No.7A in the 2006 Suit and his signature is there on the Consent Terms at Page 160. He has submitted that there are various admissions in the Consent Terms viz. that the alleged 1969 Agreement could never have been executed by Defendant No.1 as he was a minor on 23rd October, 1969 and that no consideration was received by Defendant No.1 under the alleged 1969 Agreement. Further, the claimants including the present Plaintiff No.2 have in Paragraph 6 of the Consent Terms confirmed / admitted that under the alleged 1969 Agreement, they have no right or interest in the Larger Property. There is a confirmation / admission in Paragraph 12 of the Consent Terms that the claimants including the present Plaintiff No.2 are not in possession and Defendant No.3 is in possession. It is recorded in Paragraph 6(ix) that all documents, MoUs, Power of Attorneys (PoAs) etc. executed with third parties by the claimants be cancelled / terminated. The Consent Terms were taken on record and a Consent Decree was

passed in terms thereof.

42. Mr. Khambata has submitted that there is a Declaration-cum-Indemnity executed by the present Plaintiff No.2 on 8th October, 2024 stating that he has no right, title and interest in the Larger Property. He has referred to the Order dated 10th October, 2024 by which the 2022 Suit was withdrawn by the Plaintiffs. A Chamber Summons was filed by Sainik on 5th November, 2024 in the 2006 Suit under Order I Rule 10. He has submitted that all these material facts have been suppressed by the Plaintiffs.

43. Mr. Khambata has referred to the fact that the 2006 Suit was thereafter withdrawn on 6th February, 2025 and the present Suit was filed on 5th April, 2025.

44. Mr. Khambata has submitted that from the pleadings in the present Suit, it is clear that the Plaintiffs are claiming ownership of the Suit property by virtue of the alleged 1969 Agreement as well as claiming adverse possession against the Defendants. He has submitted that both these claims are inconsistent and cannot be claimed together. He has referred to the Judgment of the Supreme Court in **Narasamma & Ors. Vs. A. Krishnappa (Dead) through Legal**

Representatives¹ at Paragraph 30, 33-36, wherein the Supreme Court has relied upon Judgment of the Supreme Court in **Karnataka Board of Wakf Vs. Union of India**² wherein at Paragraph 12 it was held that “...The pleas on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced.” It was accordingly held in the said decision that the plea of adverse possession was not available to the Appellant therein, as the Appellant therein claimed to have title to the property in 1976 but on their failure to establish title, in the alternative, the plea of adverse possession had been claimed. He has submitted that the Supreme Court has further held that in order to establish adverse possession an inquiry is required to be made into the starting point of such adverse possession and, thus, when the recorded owner got dispossessed would be crucial. He has submitted that in the present Suit apart from there being inconsistent claims made to title and adverse possession, there is inconsistency in the pleadings with regard to the starting point of possession and which is borne out from the claims made by the Plaintiffs in prior litigation including in the 2014 and 2022 Suits.

¹ (2020) 15 SCC 218

² (2004) 10 SCC 799

45. Mr. Khambata has submitted that apart from the fact that no case is being made out for ad-interim relief, the Plaintiffs have come to this Court with unclean hands and for which he has relied upon the Judgment of the Supreme Court in **Ramjas Foundation & Anr. Vs. Union of India & Ors.**³ at Paragraph 21. It has been held by the Supreme Court “*that the principle that a person who does not come to the Court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief and which principle is applicable not only to the Petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in others Courts and judicial forums. The object underlying the principle is that every Court is not only entitled but is duty bound to protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by resorting to falsehood or by making misstatement or by suppressing facts which have bearing on adjudication of the issue(s) arising in the case.*”

46. Mr. Khambata has also referred to the decision of this

³ (2010) 14 SCC 38

Court in **Shantappa Vs. Anna**⁴ at Paragraph 59. In the said decision the learned Single Judge of this Court has held that temporary injunction is a discretionary relief. In that case, the learned District Judge had refused to grant temporary injunction in favour of the Plaintiff by considering his conduct in suppressing the replies filed before the Trademark Registry. The Judgment of the Supreme Court in **Bhaskar Laxman Jadhav V. Karamveer Kakasaheb Wagh Education Society**⁵ has been relied upon wherein it was held that it is not for a litigant to decide what fact is material for adjudicating a case and what is not material. It is the obligation of the litigant to disclose all the facts of a case and leave the decision making to the Court. Further, a reliance has been placed on **Ramjas Foundation (supra)**.

47. Mr. Khambata has referred to the inconsistent claims made in the Suits filed from time to time by the Plaintiffs viz. 2011, 2014 and 2022 Suits when compared to the claims made in the present Suit. He has submitted that apart from the variance in claims, the non-disclosure of these prior proceedings have a material bearing on the maintainability of the present Suit.

⁴ 2023 SCC OnLine Bom 2566

⁵ (2013) 11 SCC 531

48. Mr. Seervai, learned Senior Counsel appearing for the Defendant Nos. 2 & 3 has pitched the case even higher. He has submitted that concealment / suppression of material facts by the Plaintiffs amounts to playing fraud with the Court as well as the opposite party and which itself is sufficient to dismiss the present Suit. He has supported the submissions of Mr. Khambata on suppression of material facts including the filing of prior Suits by the Plaintiffs as well as the claims in the present Suit varying from their claims made in the prior Suits i.e. 2011, 2014 and 2022 Suits. He has further submitted that in the 2011 Suit this Court had whilst permitting withdrawal of the Suit granted liberty to file a fresh Suit in respect of the same subject matter in that Suit. However, contrary to the liberty granted by this Court, the Plaintiffs have for the first time come out a claim of alleged adverse possession in the present Suit.

49. Mr. Seervai has relied upon the Judgment of the Supreme Court in **K. Jayaram & Ors. Vs. Bangalore Development Authority & Ors.**⁶ at Paragraphs 9, 10, 13 - 15. He has submitted that the Supreme Court had considered a similar case as the present. In

⁶ (2022) 12 SCC 815

that case the Appellants had not disclosed the filing of the Suit, its dismissal by the Civil Court and confirmation of the said Judgment of by the High Court in the Writ Petition. The Supreme Court considering that it was clear that the Appellants had suppressed the material facts which were relevant for deciding the question involved in the Writ Petition. Thus, the Appellants had not come to the Court with clean hands. It was further held by the Supreme Court that if the Petitioner withholds some vital or relevant material in order to gain advantage over the other side then he would be guilty of playing fraud with the Court as well as with the opposite parties which cannot be countenanced.

50. A reference has been made to the Judgment of the Kings Bench in England viz. *R. Vs. Kensington Income Tax Commissioners*⁷ at Paragraph 514, wherein the Court has held that when an Applicant comes to the Court to obtain relief on an ex-parte statement he should make a full and fair disclosure of all the material facts—it says facts, not law. He must not misstate the law if he can help it—the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts; and the

⁷ (1917) 1 KB 486

penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the Court will set aside any action which it has taken on the faith of the imperfect statement.

51. The Supreme Court has further in Paragraph 14 and 15 of the said decision held that the parties have to disclose the details of all the legal proceedings and litigation either past or present concerning any part of the subject-matter of dispute which is within their knowledge. Non-disclosure thereof would result in the appellants having to be non-suited on the ground of suppression of material facts.

52. Mr. Seervai has submitted that in view of the decision of the Supreme Court in *K. Jayaram & Ors. (supra)* this Court ought to non suit the Plaintiffs on the ground of gross suppression of the material facts including the prior proceedings which have been instituted by the Plaintiffs and which was thus within their knowledge.

53. Having considered the submissions, I am of the view that the present Suit has been filed by the Plaintiffs by grossly suppressing

material and cogent facts including the fact of prior proceedings and litigation between the parties which have a material bearing on the maintainability of the present Suit.

54. It is pertinent to note that the 2011 Suit had originally been filed by the Plaintiff No.1, Plaintiff No.2 and Plaintiff No.3 and Plaintiff No.4's predecessor (father) alongwith other claimants seeking a declaration that they are owners and in possession of the Suit property and that the alleged 1969 Agreement is valid, binding and subsisting and the same be performed. By an order dated 9th January, 2014, this Court had permitted the Plaintiffs to withdraw the 2011 Suit with liberty to file a fresh Suit in respect of the subject matter of the 2011 Suit in view of a formal defect in the Suit. The Plaintiffs have by filing of the present Suit taken advantage of the liberty granted by this Court and come up with a new claim of adverse possession which had never formed the subject matter of the 2011 Suit. On this ground alone, the Plaintiffs are required to be non-suited. This apart from there being a variance in the claims of the Plaintiffs in the present Suit as against the claims of the Plaintiffs in the prior litigation including the 2011 Suit as to their coming into possession of the Suit property and their being dispossessed as has

been highlighted by Mr. Khambata for Defendant No.1 and Mr. Seervai for Defendant Nos. 2 and 3.

55. The Plaintiffs endeavour in filing of the present Suit appears to be in overcoming the hurdle of the Plaintiffs' prior claim to be the owners on the basis of the alleged 1969 Agreement. This particularly considering that in the Consent Terms / Decree in the 2006 Suit, the Plaintiff No.2 had confirmed that the alleged 1969 Agreement had not been executed by Defendant No.1 and that Defendant No.1 could not have executed the same, being a minor on the date of execution i.e. 23rd October, 1969.

56. Further, there is an admission in the Consent Terms / Decree that no consideration had been received by the Defendant No.1 under the alleged 1969 Agreement. In Paragraph 6 of the Consent Terms / Decree the claimants including the present Plaintiff No.2 have confirmed that under the alleged 1969 Agreement they have no right or interest in the Larger Property. They further have confirmed in Paragraph 12 of the Consent Terms / Decree that they were not in possession of the Suit property and that Defendant No.3 is in possession. They have sought for cancellation / termination of

all documents, MoUs, PoAs etc. executed against the third parties by the Claimants including present Plaintiff No.2. Having been faced with these confirmations / admissions, the Plaintiffs have taken the divergent stand of adverse possession.

57. It has been held by the Supreme Court in ***Ramjas Foundation (supra)*** which has also been relied upon by this Court in ***Shantappa (supra)*** that the principle that a person who does not come to Court with clean hands is not entitled to be heard on merits of his grievance and in any case, such person is not entitled to get any relief is applicable not only to the Petitions filed in Articles 32, 226 and 136 of the Constitution but also to the cases instituted in others Courts and judicial forums. It has been held that the object underlying the principle is that every Court is not only entitled but is duty bound to protect itself from unscrupulous litigants who do not have any respect of truth and who try to pollute the stream of justice by resorting to falsehood or by making misstatement or by suppressing facts which have a bearing on adjudication of the issue(s) arising in the case.

58. In the present case, the Plaintiffs have grossly suppressed

material facts by failing to disclose their prior litigation including their claim made therein on ownership on the basis of alleged 1969 Agreement knowing fully well that they cannot now take such stand in view of Plaintiff No.2 abandoning such stand in the Consent Terms / Decree.

59. In the Judgment relied upon by Mr. Seervai on behalf of Defendant Nos. 2 and 3 viz. *K. Jayaram (supra)*, the Supreme Court has in unequivocal terms held that where a litigant had come with unclean hands and withheld some vital or relevant material in order to gain advantage over the other side then he would be guilty of playing fraud with the Court as well as with the opposite parties which cannot be countenanced. It is a duty of the litigant to disclose the details of all the legal proceedings and litigation either in the past or present concerning any part of the subject-matter of dispute which is within their knowledge. The Supreme Court has held that the Appellants therein have to be non-suited on the ground of suppression of material facts. This Judgment of the Supreme Court is applicable to the present case.

60. Here, the Plaintiffs have suppressed material facts which

are relevant for deciding the questions involved in the Suit and by their withholding such vital or relevant material in order to gain advantage over the other side, the Plaintiffs are guilty of playing fraud with the Court as well as with the opposite parties which cannot be countenanced. Although Mr. Damle had contended that the Judgment of the Supreme Court in *K. Jayaram (Supra)* is inapplicable in the present case as that case concerned a Writ Petition and not a Suit, there is no merit in such contention. It has been held by the Supreme Court in *Ramjas Foundation (supra)* in Paragraph 21 as aforementioned that the principle that a person who does not come to Court with clean hands is not entitled to be heard on merits of the pleadings and the person is not entitled to any relief is applicable not only to the Petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in other Courts and judicial forums. Thus, the Plaintiffs were duty bound to disclose the material facts including the prior litigation instituted by them particularly since they had made contrary claims in those proceedings.

61. In that view of the matter, I have no hesitation in non-suiting the Plaintiffs on the ground of gross suppression of material

facts.

62. The Suit No.130 of 2025 is accordingly dismissed.

63. The Interim Application No.2143 of 2025 does not survive and is also disposed of.

64. There shall be no order as to costs.

[R.I. CHAGLA, J.]