

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

INTERIM APPLICATION NO.1767 OF 2020

IN

SUIT NO.367 OF 2023

M/s. Shaikh Constructions (deleted since deceased)

1A. Asiya Salim Shaikh

Aged about 64 years, Occ. Housewife

1B. Asad Salim Shaikh

Aged about 40 years, Occ. Business,

Being heirs and legal representatives

of Salim K. Shaikh, sole Proprietor of

M/s. Shaikh Constructions

Both having residence at Amir House,

Plot No.125, Behind Nandanvan Building,

Next to Shri Sagar Hotel, L.T. Road,

Borivali West, Mumbai-400 092.

....Applicant/Plaintiff

Versus

1. Romell Housing LLP,
Limited Liability Partnership Act, 2008,
having office at : Gharkul Housing CHS,
B-Wing, Vile Parle (East),
Mumbai-400 057.

2. M/s. Velentine Properties Pvt. Ltd.,
Limited Liability Partnership Act, 2008,
Registered Address at 7th Floor,
Lalani Aura, 34th Road, Bandra (West),
Mumbai-400 050.

3. Romell Real Estate Pvt. Ltd.,
Limited Liability Partnership Act, 2008,
Registered Address at Gharkul Housing
CHS, B-Wing, Vile Parle (East),
Mumbai-400 057.

4. Thomas Pereira
an adult, Indian inhabitant, Occ.
Not Known, Residing at Rizvi Heights,
101, Gabriel Road, Mahim (West),
Mumbai-40 016.
5. Anthony Pereira
an adult, Indian inhabitant, Occ.
Not Known, Residing at Rose Sadan,
Flat No.9, 3, Rebello Road, Bandra (West),
Mumbai-400 050.
6. Juliet Alves
an adult, Indian inhabitant, Occ.
Not Known, Residing at Rose Sadan,
Flat No.1, 3, Rebello Road, Bandra (West),
Mumbai-400 050.
7. Mabel Pereira
an adult, Indian inhabitant, Occ.
Not Known, Residing at 8, Agnelo Abodes
Carmel CHS, St. John Baptist Road,
Bandra (West), Mumbai-400 050.
8. Philomena D'Silva
an adult, Indian inhabitant, Occ.
Not Known, Residing at Rose Sadan,
Flat No.12, 3rd Floor, Opp. K.C. Hostel,
Off. Veronica Road, Bandra (West),
Mumbai-400 050.
9. Alice D'Souza
an adult, Indian inhabitant, Occ.
Not Known, Residing at Rizvi Heights,
101, Gabriel Road, Mahim (West),
Mumbai-400 016.

10. Jorge D'Souza
an adult, Indian inhabitant, Occ.
Not Known, Residing at Rizvi Heights,
101, Gabriel Road, Mahim (West),
Mumbai-400 016.
11. Gabrieleal Pereira
an adult, Indian inhabitant, Occ.
Not Known, Residing at 138/3,
Bairao Alto, Assagao,
Bardez, Goa-403 507.
12. Xavier Pereira
an adult, Indian inhabitant, Occ.
Not Known, Residing at Rizvi Heights,
201, 2nd Floor, Gabriel Road,
Mahim (West), Mumbai-400 016.
13. Renton D'Souza
an adult, Indian inhabitant, Occ.
Not Known, Residing at 596, Bhoiwada
Village, Parel, Mumbai-400 012.
14. Savio D'Souza
an adult, Indian inhabitant, Occ.
Not Known, Residing at 596, Bhoiwada
Village, Parel, Mumbai-400 012.
15. Sabra D'Souza
an adult, Indian inhabitant, Occ.
Not Known, Residing at B/17, Municipal
Building, Sion, Agarwada, Mumbai-400 012.
16. Ruby D'Souza
an adult, Indian inhabitant, Occ.
Not Known, Residing at Paul Patel House,
Chakala Village, Near Shiv Sena Shakha,
Andheri (West), Mumbai-400 099.

17. The Sub-Registrar Office,
Borivali No.3,
District Bandra, Mumbai Suburban.
18. The City Survey Officer & Tehsildar
Tehsildar Building,
2nd/3rd Floor, Natakwala Lane,
S.V. Road, Borivali (West),
Mumbai-400 092.
19. Talathi
Dahisar Village, Aksar Road,
Ashok Nagar, Opposite Ajit Palace,
CKP Colony, Haridas Nagar,
Borivali (West), Mumbai – 400 092.
20. Court Receiver
Court Receiver Office,
Bombay High Court,
Fort, Mumbai – 400 001.
21. Sultana Shaikh
Flat No.102, Sunrock Residency,
Near Haidery Chowk,
Naya Nagar, Mira Road (E),
Thane- 401 107.
22. Mr. Manpreet Singh
Claiming to be a Partner of
M/s. Schumi India
Residing at 4, Bhushan Building,
R. K. Mission Road, Khar (West),
Mumbai – 400 052.
23. Viking Motors Pvt. Ltd.
A Private Limited Company
having its office at
Survey No.97/C,

Next to Dahisar Bus Depot,
Off. Western Express Highway,
Dahisar (East),
Mumbai - 400 068.

... Defendants

**WITH
INTERIM APPLICATION (L) NO.31242 OF 2025
IN
SUIT NO.158 OF 2024**

- 1A. Asiya Salim Shaikh
Aged about 65 years, Occ. Housewife
- 1B. Asad Salim Shaikh
Aged about 40 years, Occ. Business,
Both residing at Amir House, Plot No.125,
Behind Nandanvan Building, L.T. Road,
Borivali West, Mumbai-400 092.Applicant/Plaintiff

Versus

1. Romell Housing LLP,
Limited Liability Partnership Act, 2008,
having office at : Gharkul Housing CHS,
B-Wing, Vile Parle (East),
Mumbai-400 057.
2. M/s. Pooja Land & Premises Pvt. Ltd.,
A Company incorporated under the
provisions of Companies Act, 1956
having registered office at Le-Palazzo Building,
1st floor, August Kranti Marg, Nana Chowk,
Mumbai-400 036.
3. Romell Real Estate Pvt. Ltd.,
Limited Liability Partnership Act, 2008,
Having registered address Gharkul Hsg. CHS.
B-Wing, Vile Parle (East),
Mumbai-400 057.

4. Krishnarao Khanderao More
 An Adult Indian Inhabitant, Occ. Not known,
 Residing at 9/20, J.K. Building, Gamdevi,
 Mumbai-400 007.
5. Vishnu Khanderao More
 An Adult Indian Inhabitant, Occ. Not known,
 Residing at 9/20, J.K. Building, Gamdevi,
 Mumbai-400 007.
6. Shankar Khanderao More
 An Adult Indian Inhabitant, Occ. Not known,
 Residing at 9/20, J.K. Building, Gamdevi,
 Mumbai-400 007.
7. Dattatray Krishnarao More
 An Adult Indian Inhabitant, Occ. Not known,
 Residing at 9/20, J.K. Building, Gamdevi,
 Mumbai-400 007.
8. Pramod Krishnarao More
 An Adult Indian Inhabitant, Occ. Not known,
 Residing at 9/20, J.K. Building, Gamdevi,
 Mumbai-400 007.
9. Ravindra Khanderao More
 An Adult Indian Inhabitant, Occ. Not known,
 Residing at 9/20, J.K. Building, Gamdevi,
 Mumbai-400 007.
10. Rajendra Krishnarao More
 An Adult Indian Inhabitant, Occ. Not known,
 Residing at 9/20, J.K. Building, Gamdevi,
 Mumbai-400 007.
11. Vidya Krishnarao More
 An Adult Indian Inhabitant, Occ. Not known,

Residing at 9/20, J.K. Building, Gamdevi,
Mumbai-400 007.

12. Kala Krishnarao More
An Adult Indian Inhabitant, Occ. Not known,
Residing at 9/20, J.K. Building, Gamdevi,
Mumbai-400 007.
13. Lata Krishnarao More
An Adult Indian Inhabitant, Occ. Not known,
Residing at 9/20, J.K. Building, Gamdevi,
Mumbai-400 007.
14. Devdas Vishnu More
An Adult Indian Inhabitant, Occ. Not known,
Residing at 9/20, J.K. Building, Gamdevi,
Mumbai-400 007.
15. Jyotsna Vishnu More
An Adult Indian Inhabitant, Occ. Not known,
Residing at 9/20, J.K. Building, Gamdevi,
Mumbai-400 007.
16. Mangla Vishnu More
An Adult Indian Inhabitant, Occ. Not known,
Residing at 9/20, J.K. Building, Gamdevi,
Mumbai-400 007.
17. Nandkishore Shankar More
An Adult Indian Inhabitant, Occ. Not known,
Residing at 9/20, J.K. Building, Gamdevi,
Mumbai-400 007.
18. Nandini Shankar More
An Adult Indian Inhabitant, Occ. Not known,
Residing at 9/20, J.K. Building, Gamdevi,
Mumbai-400 007.

19. Hema Shankar More
An Adult Indian Inhabitant, Occ. Not known,
Residing at 9/20, J.K. Building, Gamdevi,
Mumbai-400 007.
20. Ramakrishna Dattatray More
An Adult Indian Inhabitant, Occ. Not known,
Residing at 9/20, J.K. Building, Gamdevi,
Mumbai-400 007.
21. Predeep Dattatray More
An Adult Indian Inhabitant, Occ. Not known,
Residing at 9/20, J.K. Building, Gamdevi,
Mumbai-400 007.
22. Sachin Dattatray More
An Adult Indian Inhabitant, Occ. Not known,
Residing at 9/20, J.K. Building, Gamdevi,
Mumbai-400 007.
23. Subhabgi Dattatray More
An Adult Indian Inhabitant, Occ. Not known,
Residing at 9/20, J.K. Building, Gamdevi,
Mumbai-400 007.
24. Surekha Dattatray More
An Adult Indian Inhabitant, Occ. Not known,
Residing at 9/20, J.K. Building, Gamdevi,
Mumbai-400 007.
25. Kanchan Dattatray More
An Adult Indian Inhabitant, Occ. Not known,
Residing at 9/20, J.K. Building, Gamdevi,
Mumbai-400 007.
26. Bhalchandra Laxman Thakur
4B, Raghavji Wadi, French Bridge,
Gaondevi, Mumbai-400 007.

27. Pushpalata Laxman Thakur
4B, Raghavji Wadi, French Bridge,
Gaondevi, Mumbai-400 007.
28. Aarti P. Sanzgiri
4B, Raghavji Wadi, French Bridge,
Gaondevi, Mumbai-400 007.
29. Priyanka Prakash Nagarkar
4B, Raghavji Wadi, French Bridge,
Gaondevi, Mumbai-400 007.
30. Namrata Sardeep Talim
4B, Raghavji Wadi, French Bridge,
Gaondevi, Mumbai-400 007.
31. Suraj Builders
A Registered Partnership Firm,
Having registered office address at
Gangar House, S. V. Road, Borivali W,
Mumbai-400 092.
32. The Sub-Registrar Office,
Borivali No.3,
District Bandra, Mumbai Suburban.
33. The City Survey Officer & Tehsildar,
Tehsildar Building,
2nd/3rd floor, Natakwala Lane,
S. V. Road, Borivali (West),
Mumbai-400 092.
34. Talathi,
Dahisar Village, Aksar Road,
Ashok Nagar, Opposite Ajit Palace,
CKP Colony, Haridaas Nagar,
Borivali (West), Mumbai-400 092.

35. Court Receiver,
Court Receiver Office,
Bombay High Court,
Fort, Mumbai-400 001.

36. Sultana Shaikh
Flat No.103, Sunrock residency,
Near Haidery Chowk,
Naya Nagar, Mira Road (E),
Thane-401 107.

37. Faizal Shaikh
Flat No.103, Sunrock residency,
Near Haidery Chowk,
Naya Nagar, Mira Road (E),
Thane-401 107.

....Defendants

**WITH
INTERIM APPLICATION (L) NO.31248 OF 2025
IN
SUIT NO.502 OF 2023**

1A. Asiya Salim Shaikh
Aged about 65 years, Occ. Housewife

1B. Asad Salim Shaikh
Aged about 40 years, Occ. Business,
Both residing at Amir House, Plot No.125,
Behind Nandanvan Building, L.T. Road,
Borivali West, Mumbai-400 092.Applicant/Plaintiff

Versus

1. Romell Housing LLP,
Limited Liability Partnership Act, 2008,
having office at : Gharkul Housing CHS,
B-Wing, Vile Parle (East),
Mumbai-400 057.

2. M/s. Pooja Land & Premises Pvt. Ltd.,
A Company incorporated under the
provisions of Companies Act, 1956
having registered office at Le-Palazzo Building,
1st floor, August Kranti Marg, Nana Chowk,
Mumbai-400 036.
3. Romell Real Estate Pvt. Ltd.,
Limited Liability Partnership Act, 2008,
Having registered address Gharkul Hsg. CHS.
B-Wing, Vile Parle (East),
Mumbai-400 057.
4. Mr. Vinod Manilal Mehta
Age: 63 years, Residing at
4 Sohini, 1st floor, D.J. Road,
Vile Parle East, Mumbai-400 056.
5. Mr. Manharlal Manilal Mehta
Age: 71 years, Residing at
4 Sohini, 1st floor, D.J. Road,
Vile Parle East, Mumbai-400 056.
6. Mrs. Neeta Rajnikant Mehta
Residing at 6 Sohini, 2nd floor,
D.J. Road, Vile Parle East,
Mumbai-400 056.
7. Mr. Kumar Rajnikant Mehta
Residing at 6 Sohini, 2nd floor,
D.J. Road, Vile Parle East,
Mumbai-400 056.
8. Mrs. Rupa Shivdas Samani
Age: 56 years, Residing at
X Block, Sikha Nagar,
V. P. Road, Mumbai-400 004.

9. Mrs. Seema Nayan Masrani
Age: 53 years, Residing at
6 Chinar, 3rd floor, Vasant Vihar Complex,
Thane W, Mumbai-400 610.
10. Mrs. Mala Deven Tanna
Age: 50 years, Residing at
B-201, Omvakralund, Opp. Bhakti Mandir,
5 Pakadhi, Thane W, Mumbai-400 610.
11. The Sub-Registrar Office,
Borivali No.3,
District Bandra, Mumbai Suburban.
12. The City Survey Officer & Tehsildar,
Tehsildar Building,
2nd/3rd floor, Natakwalla Lane,
S. V. Road, Borivali (West),
Mumbai-400 092.
13. Talathi,
Dahisar Village, Aksar Road,
Ashok Nagar, Opposite Ajit Palace,
CKP Colony, Haridaas Nagar,
Borivali (West), Mumbai-400 092.
14. Court Receiver,
Court Receiver Office,
Bombay High Court,
Fort, Mumbai-400 001.
15. Sultana Shaikh
Flat No.103, Sunrock residency,
Near Haidery Chowk,
Naya Nagar, Mira Road (E),
Thane-401 107.

16. Faizal Shaikh
Residing at Flat No.103,
Sunrock residency, Near Haidery
Chowk, Naya Nagar, Mira Road (E),
Thane-401 107.
17. Mr. Rajesh Virendra Tiwari
Residing at 1/2, Ashok Kunj, Tejpal,
Vile Parle East, Mumbai-400 057.
18. Mr. Rakesh Virendra Tiwari
Residing at 1/2, Ashok Kunj, Tejpal,
Vile Parle East, Mumbai-400 057.
19. Mr. Mukesh Virendra Tiwari
Residing at 1/2, Ashok Kunj, Tejpal,
Vile Parle East, Mumbai-400 057.
20. Mr. Shankar Virendra
Residing at 1/2, Ashok Kunj, Tejpal,
Vile Parle East, Mumbai-400 057.
21. Shivdevi Virendra Tiwari
Residing at 1/2, Ashok Kunj, Tejpal,
Vile Parle East, Mumbai-400 057.

....Defendants

Mr. Pradeep Sancheti, Senior Advocate a/w Mr. Rohan Sawant, Ms. Pallavi Bali, Mr. Laxman Jain and Ms. Garima Mahrotra for the Applicant/Plaintiff.

Mr. Aspi Chinoy, Senior Advocate a/w Mr. G.S. Godbole, Senior Advocate i/by Mr. Drupad Patil & Merlyn Dias for the Defendants.

Mr. Rajat Jain i/by M. M. Legal Associates for Defendant No.2.

Mr. Ram Ugrah Singh a/w. Annkur Jain, Kajal Soni for Defendant Nos.17 to 21 in Interim Application (L) No.31248 of 2025 in Suit No.502 of 2023.

Mr. N.C. Pawar, Court Receiver, High Court, Bombay present.

CORAM : JITENDRA JAIN, J.

RESERVED ON : 16 October 2025

PRONOUNCED ON : 03 November 2025

JUDGMENT :

1. At the outset, learned counsel for all the parties state that the facts in all the three interim applications in three different suits are similar and therefore, lead matter be taken as Interim Application No.1767 of 2020 in Suit No.367 of 2023. Therefore, for the purpose of adjudication of all three interim applications filed in different suits, I have considered said Suit No.367 of 2023 and interim application filed therein as a lead matter and the arguments by all the parties were also advanced on this basis, except reference to some additional documents/pleadings in other suits which parties have relied upon in the course of the hearing.

2. This application is taken out by the plaintiffs seeking following reliefs :-

“a) Pending the hearing and final disposal of this Suit, the Defendant No. 1 and Defendant No. 3 by themselves, their respective partners, representatives, agents, servants and any third persons claiming through it be restrained by an order and injunction of this Hon'ble Court from in any manner seeking to enforce or disturb the Plaintiffs/Applicants use, possession and occupation of the said Property;

b) Pending the hearing and final disposal of this Suit that the Court Receiver, High Court, Bombay, appointed as a Receiver of the said property (pursuant to the Order in Criminal Writ Petition No.3214 of 2017) be directed to hand back the possession of the said property to the Plaintiffs/Applicants;

c) In the alternative and without prejudice to prayer clause (b) above, Court Receiver, High Court, Bombay, be continued

(i) as a Receiver of the said property, and

(ii) be further pleased the Plaintiffs/Applicants be appointed as the agent of the Court Receiver with all requisite rights and powers as this Hon'ble Court may deem fit and proper ;

d) Pending the hearing and final disposal of this Suit, this Hon'ble Court be pleased to pass an Order and injunction restraining the Defendants by themselves, their respective partners, representatives, agents, servants and any third persons claiming through it be from or in any manner acting upon or using or creating any Agreements/documents in favour of any third party based on the documents herein:

i) Agreement for Sale-1 dated 30th December, 2006 (Exhibit 'E' to the Plaint),

ii) Purportedly Agreement for Sale-2 dated 30th December, 2006, Confirmation Deed dated 9th April, 2008, Rectification Deed dated 13th June, 2008, (as mentioned in Recital O & U(iii) of the first Indenture of Conveyance and Recital N & S(iii) of the second Indenture of Conveyance both dated 31 March, 2017),

iii) Two Deed of Conveyances dated 31st March, 2017 with respect to said Property (Exhibit 'F' & 'F-1' to the Plaint),

iv) Irrevocable Power of Attorney dated 19th May, 2010 (Exhibit 'M' to the Plaint),

v) General Power of Attorney dated 19th May, 2010 (Exhibit 'L' to the Plaint),

vi) Two Deeds of Assignment of Possession and Possessory Title dated 31st December, 2016 (Exhibit 'J' & 'K' to the Plaint),

vii) Purportedly Letter of physical possession dated 11th April, 2017 was addressed by Defendant No. 2 to Defendant No. 1

(Exhibit 'I-1' to the Complaint),

viii) Deed of Assignment cum Surrender of Possessory Title and Physical Possession dated 10th December, 2016 (Exhibit 'T' to the Complaint),

ix) Purportedly letter of physical possession dated 10th December, 2016 (Exhibit 'Z' to the Complaint),

x) General Power of Attorney dated 10th December, 2016 (Exhibit 'AA' to the Complaint),

xi) Deed of Surrender cum Possessory cum Tenancy Rights dated 6th June, 2016 (Exhibit 'BB' to the Complaint),

xii) Purportedly Letter of physical possession dated 6th June 2016 (Exhibit 'CC' to the Complaint);

e) Pending the hearing and final disposal of the Suit, this Hon'ble Court be pleased to restrain the Defendant No. 20 (Court Receiver) from in any manner disturbing the use, possession and occupation of the said property by the Plaintiffs/Applicants;

f) Pending the hearing and final disposal of this Suit, this Hon'ble Court be pleased to restrain Defendant nos. 17 to 19 by them or through them from making any further entries in the 7/12 extract or any other property records in respect of the said Property;

g) Pending the hearing and final disposal of this Suit, the Hon'ble Court be pleased to impound the documents listed in prayer clause (d) above;

h) for ad-interim reliefs in terms of prayer clauses (a) to (g) above.”

Parties:-

3. The plaintiffs are the legal heirs of sole surviving partner of the partnership firm M/s. Shaikh Constructions.

4. Defendant no.1 is a contesting party who had purchased the suit property on 31 March 2017 from defendant No.2. Defendant no.2 had

purchased the suit property from defendant nos.4 to 16 on 30 December 2006. Defendant nos.17, 18 and 19 are the officers of the State who are concerned with the land records. Defendant no.20 is the Court Receiver. Defendant no.21 is the ex-wife of Mr. K. N. Shaikh who had the alleged power of attorney in her favour and the said alleged power of attorney is also the subject matter of the present suit. Defendant nos.22 and 23 are the parties who had surrendered their possession of the suit property, a fact which is also the subject matter of the present suit.

Prelude:-

5. On 18 December 1975, a tenancy agreement was entered into between K. N. Shaikh as a tenant and John Pereira & Ors., landlord, for permanent right of access to K. N. Shaikh and/or his assignees for a consideration of Rs.25,000/- and rent of Rs.300/- per month. K. N. Shaikh was given right of access for the purpose of his quarrying operations. The sole proprietorship of K. N. Shaikh was run in the name of Shaikh Constructions.

6. On 10 December 1979, Articles of Agreement was executed between the then landlord Pereiras and M/s. Amir Constructions for sale of land to M/s. Amir Constructions for Rs.8,90,000/-, out of which, a sum of Rs.50,000/- is said to have been received. The said agreement acknowledges that the quarry owner and its servants/agents are using their cars and lorries through the said

property.

7. On 22 March 1980, a Joint Venture Agreement (JVA) was entered into by M/s. Amir Constructions, Shaikhs and Ravi Builders whereby it was agreed that the property mentioned therein which includes suit property will be developed through a partnership firm by the name of M/s. Shaikh Constructions in which K. N. Shaikh and his three sons were also partners. The agreement further records the right of access of K. N. Shaikh. There was a change in the constitution of the firm formed under JVA on account of dissolution and retirement, whereby after reconstitution, K. N. Shaikh, his three sons and Mohammed Shahid Umar Khan and Syed Mohammed Zaidi continued to be partners of M/s. Shaikh Constructions. Subsequently, Mohammed Shahid Umar Khan and Syed Mohammed Zaidi retired, which resulted in the firm consisting of only K. N. Shaikh and his three sons. Thereafter, from January 1990, the Shaikhs continued to be the partners in the firm. Two children of K. N. Shaikh passed away in 2000 and 2007 respectively and post 2007, the firm consisted of only two partners, K. N. Shaikh and Salim Shaikh. Mr. K. N. Shaikh died on 23 January 2017 and thereafter the firm was survived by sole surviving partner who has filed the present suit.

8. On 30 December 2006, the Pereiras i.e., defendant nos.4 to 16, entered into an Agreement for Sale with Velentine Properties-defendant no.2. In the said agreement, it is specifically stated that K.

N. Shaikh was in possession of the said plot, though forcefully.

9. On 23 January 2017, K. N. Shaikh expired and since the firm consisted of only two partners, it ceased to exist with the sole surviving partner Salim K. Shaikh becoming the sole proprietor.

10. On 31 March 2017, Velentine-defendant no.2, executed two deeds of conveyance in favour of defendant no.1-contesting defendant in the present proceedings. These documents also record the fact of possession of K. N. Shaikh and the representation made by the vendor i.e., defendant no.2-Velentine.

11. From November 2016 to 30 January 2017, defendant no.1-Romell Housing made various applications to the Collector of Stamps for adjudicating stamp duty on the above documents in which defendant no.1 stated that the possession of the land was not with the vendor i.e. Velentine-defendant no.2. The Collector of Stamps passed an order on 31 March 2017 adjudicating the stamp duty after considering the said fact.

12. On 11 April 2017, a letter stating handing over of physical possession by defendant no.2-Velentine to defendant no.1-Romell Housing was exchanged. In the said letter of possession, it is recorded that the area sold is 16,691.60 sq.mtrs. but the possession of only 1,371.34 sq.mtrs. was handed over, which is on the basis of one Mr.

Manpreet Singh Bajaj surrendering his tenancy rights to defendant no.2.

13. During the intervening period between 21 April 2017 and 22 April 2017 there was an incident of dispossession and repossession of the suit properties and many things revolve around this in the present matter. This also led to the institution of a Criminal Writ Petition by contesting defendant no.1 and orders passed therein which reached the Hon'ble Supreme Court, whereupon a Court Receiver came to be appointed in 2019 by the Hon'ble Supreme Court.

14. Defendant No.1 also initiated proceedings under Section 145 of the Code of Criminal Procedure, 1973 (Cr.P.C.) to seek possession, the proceedings of which came up before the learned Single Judge of this Court who, on 16 September 2025, directed the Court Receiver to handover possession to defendant no.1 herein. It is this order which instigated the plaintiff to mention the present Interim Application for ad-interim relief on 19 September 2025 and this Court after hearing both parties, passed an ad-interim order appointing a Court Receiver in the Civil Suit and agreed to hear the Interim Application finally on a day-to-day basis.

Submissions of the Plaintiff/Applicant:-

15. The learned senior counsel, Mr. Sancheti's submission in brief is that the plaintiff has acquired title by adverse possession from the original owners and, therefore, after the expiry of 12 years, the

original owners ceased to be owners and, therefore, could not have conveyed the suit property to the contesting defendants. He further submitted that the documents of possession in favour of the defendants and other documents are forged and fabricated and, therefore, till 21 April 2017, the plaintiff was in possession and on dispossession, was put back in possession by the police and continued thereafter till the appointment of a Court Receiver in 2019 by the Hon'ble Supreme Court. He, therefore, sought for interim reliefs as prayed for.

16. Learned senior counsel, Mr. Sancheti for the plaintiff brought to my attention the Deed of Surrender-cum-possessory-cum-tenancy Rights dated 6 June 2016, wherein it is stated by defendant no.22-Mr. Manpreet Singh Bajaj, that he has surrendered the possession of an area admeasuring 1371.34 sq.mtrs. The said Deed of Surrender is at pages 981 and 993. Mr. Sancheti submitted that if that be so, then what was the need to execute a Letter of Physical Possession on 11 April 2017 by defendant no.2 in favour of defendant no.1 and why the fact of June 2016 is not recorded in 31 March 2017 document. The learned senior counsel, Mr. Sancheti, thereafter brought to my attention the events during the period between 17 April 2017 to 23 April 2017 to contend the attempts made by defendant no.1 to take forcible possession of the suit property from the plaintiff and the steps taken by the plaintiff to recover the possession. He submitted and brought to my attention page nos.1018 and 1019 of the Plaint, to show that it was only on 21 April 2017 that defendant no.1 installed

porta cabins on the suit property and along with unknown persons sought to dispossess the plaintiff.

17. Against the aforesaid dispossession and repossession incident, defendant no.1 filed Criminal Writ Petition bearing No. 3214 of 2017, challenging the action of the Police Officers to recover the possession from defendant no.1. Mr. Sancheti submitted that it was in the course of these proceedings that they came across the documents allegedly executed by K. N. Shaikh in 2016 and assignment deed executed by Sultana (ex-wife of K. N. Shaikh) on the basis of which defendant no.1 was asserting that they had obtained the possession. He submitted that if these documents were genuine, then why the same did not find any reference in the agreement dated 31 March 2017 executed between defendant no.2 and defendant no.1. He submitted that in the said document, it is expressly stated that the possession is with K. N. Shaikh. He, therefore, challenged the genuineness of these documents by which the defendant no.1 is trying to assert possession of the suit property. He further submitted that defendant no.1 has filed a Suit bearing No.242 of 2018 under Section 6 of the Specific Relief Act, 1963, but there have been no orders passed therein till today.

18. The learned senior counsel, thereafter, relied upon the order passed by this Court in Criminal Writ Petition No.3214 of 2017 dated 14 February 2018, wherein the contention of defendant no.1 is recorded. These contentions being that the defendants had purchased the property after making payment to K. N. Shaikh by executing

various conveyance deeds between December 2016 to March 2017. It is also recorded that it is after the execution of the aforesaid sale deeds, that defendant no.1 has placed porta cabins, appointed security and erected name boards on the site. Mr. Sancheti submitted that the porta cabins were delivered on 21 April 2017 and there is no material to show how defendant no.1 acquired possession prior to 21 April 2017, since the documents on which they assert possession, are fabricated. He, therefore, submitted that possession prior to the untoward incident was with K. N. Shaikh.

19. The learned senior counsel, Mr. Sancheti also emphasised by relying upon paragraph no.43 of the High Court order dated 14 December 2018 on the scope of proceedings under Section 145 of Cr.P.C. and the powers of Competent Civil Court. He submitted that this Court can, by considering the documents on record, come to a finding on the possession without looking into the orders passed in the proceedings under Section 145 of Cr.P.C.

20. The learned senior counsel, Mr. Sancheti submitted that there is nothing to show between 31 March 2017 and 21 April 2017 as to how the defendants have obtained the possession. Mr. Sancheti, thereafter, relied upon the decision of this Court in the case of ***Gulabchand Daulatram Agarwal Vs. Datta Mandir Sansthan Trust and Ors¹*** and the decision of the Supreme Court in the case of ***Ravinder Kaur Grewal***

1 1986 SCC Online Bom 155

*and Ors Vs. Manjit Kaur and Ors*², to contend that once the period of adverse possession expires, the person in possession becomes the owner of the property and the original owner ceases to be the owner. He further stated that although the decision of the Supreme Court on facts was against the appellant therein, the analysis made in paragraph nos.25, 26 and 52 onwards supports his submission that a person in adverse possession gets a perfected title and he cannot be dispossessed without due process of law. He submitted that the defendants have not adopted the due process of law to dispossess the plaintiff. He therefore, submitted that in the present case, based on the documents executed between the defendants, the plaintiff's possession has been accepted since 1980 and no proceedings have been taken to dispossess the plaintiff till 1992 i.e. for a period of 12 years and therefore, by adverse possession, the plaintiff becomes the owner of the property post 1992 and any transaction subsequent thereto by the original owners i.e. Pereiras, is illegal.

21. Mr. Sancheti, learned senior counsel submitted by referring to the Deed of Surrender of Possessory-cum-tenancy Rights dated 6 June 2016 executed by Mr. Manpreet Singh Bajaj-defendant no.22 that there is no reference to this document in the agreement executed on 31 March 2017 between defendant no.1 and defendant no.2. According to him, if the possession by Mr. Manpreet Singh Bajaj is already handed over in 2016 then in the absence of any reference being found in the agreement of 31 March 2017, the fact of Mr.

2 (2019) 8 SCC 729

Manpreet Singh Bajaj having handed over possession in 2016 casts a suspicion. He further submitted that on the contrary, in the agreement dated 31 March 2017 there is a specific averment that the entire property is not in possession of the seller but, in possession of K. N. Shaikh.

22. Mr. Sancheti, thereafter, made submissions on the Deed of Assignment cum Surrender of Possessory Title and Physical Possession dated 10 December 2016 allegedly executed by K. N. Shaikh in favour of defendant no.1. He submitted that on a reading of various clauses of this document it is clear that the defendant no.1 was well aware that K. N. Shaikh had possessory title and actual physical possession of the property. He further submitted that reference of Irrevocable General Power of Attorney (IGPOA) executed on 19 May 2010 and registered on 25 May 2010 bearing Registration No.BDR-6 4665/2010 and referred to in the said document, is a fabricated one because with the same registration number there is a General Power of Attorney (GPOA), and there cannot be two documents registered with the same number. He further submitted that it is incomprehensible that in the document of 10 December 2016, K. N. Shaikh has stated that he had executed IGPOA on 19 May 2010 in favour of his ex-wife which was wrongly revoked and re-confirms the existence of the same.

23. He further stated that the aforesaid document states that the plaintiff has been paid Rs.35 lakhs after deducting Tax Deducted at Source (TDS) in two installments, being Rs.15 lakhs on 25 July 2016

and Rs.20 lakhs on 6 December 2016, before the execution of the said document on 10 December 2016. He submits that this is contrary to the documents annexed to the written statement of defendant No.1 and the averments made therein. He further states that in the said document the fact of K. N. Shaikh having “adverse possession” is also noted. He further submitted that the consideration of Rs.35 lakhs is only specified in the said document after having stated that K. N. Shaikh has possessory title, which shocks the conscience, and it is nothing but a sham consideration. He submitted that this document is forged and false. He therefore, submitted that the documents on the basis of which defendant no.1 is claiming possession are forged and false.

24. Mr. Sancheti, learned senior counsel, thereafter referred to paragraph no.56 of the written statement of defendant nos.1 and 3 wherein defendant no.1 has stated that Rs.14,85,000/- was paid on 25 July 2016 after deducting TDS and Rs.19,80,000/- was paid on 6 December 2016 after deducting TDS. He states that the TDS certificate enclosed with the said written statement refers to the agreement dated 6 December 2015 and 1 January 2017 and not to the agreement dated 10 December 2016. He, therefore, submitted that the payments made and referred to by defendant no.1 are with respect to some other transactions and not with respect to the alleged agreement dated 10 December 2016. He further submitted that in the TDS certificate the dates of payment referred to are different from the dates of payment mentioned in the document dated 10 December

2016. He further referred to the certificate issued by HDFC Bank to defendant no.1, wherein again the dates of payment and figures of payment do not tally with the details of payment mentioned in the agreement dated 10 December 2016.

25. Mr. Sancheti, learned senior counsel, thereafter relied upon the evidence led in the proceedings under Section 145 of Cr.PC. Referring to the evidence of the advocate who had prepared the document dated 10 December 2016, he submitted that the advocate has stated that K. N. Shaikh was suffering from liver cancer and was admitted in hospital for three or four times due to infection in his lungs. He further submitted that in the cross-examination of the advocate who had prepared the document, the said advocate had stated that the document was read over to K. N. Shaikh since the documents were in English and it was explained to K. N. Shaikh by two persons, Imran and Tripathi. Mr. Sancheti, further submitted that in the document dated 10 December 2016 there is no such statement indicating that K. N. Shaikh was made aware about the contents of the documents. He, therefore, strongly pleaded that the document dated 10 December 2016 is false and fabricated.

26. Mr. Sancheti, learned senior counsel, thereafter referred to the evidence of defendant no.1 recorded in the criminal proceedings in which defendant no.1 has admitted that power of attorney given by K. N. Shaikh was not signed in their presence.

27. Mr. Sancheti, learned senior counsel, brought to my attention pages 838 and 857 of the plaint to demonstrate that by the same registration number, two documents are registered, one as GPOA and another IGPOA. He brought out various distinctions between the two documents to demonstrate that the reference of IGPOA in the document dated 10 December 2016 and 31 December 2016 is a fabricated document because with the same registration number there cannot be two documents, further having different narration and inconsistencies between the two documents. He submitted that there is a grave doubt about the genuineness of the IGPOA which is referred to in the document dated 10 December 2016 on the basis of which the defendant no.1 is claiming that the possession was handed over to them. He further submitted that on 10 December 2016, the plaintiff allegedly only paid Rs.35 lakhs whereas to defendant no.21-Sultana, defendants made payment of more than Rs.70 lakhs and paid stamp duty of about Rs.2 crores on the document with Sultana.

28. Mr. Sancheti, learned senior counsel, submits that if by document dated 10 December 2016, defendant no.1 had acquired possessory title of the plaintiff, then it seems incongruous for defendant no.1 to execute another document with defendant no.21-Sultana, ex-wife of the plaintiff for similar rights based on IGPOA. He submits that defendant no.1 is a commercial entity and would not spend Rs.2.72 crores in the execution of the document dated 31 December 2016 with defendant no.21. He submits that this casts a suspicion on the *modus operandi* adopted by the defendants to cover

up fabrication and forgery.

29. The learned senior counsel, Mr. Sancheti, thereafter attacked the genuineness of the GPOA executed by the plaintiff in favour of defendant nos.1 and 3 on 10 December 2016. Firstly, he submitted that the said document was executed on a stamp paper of Rs.100/- and the same was not registered. Although on a reading of all the clauses of the said document, what is alleged to be given in favour of defendant nos.1 and 3 were all the rights, title and interest which the plaintiff as an owner could have exercised. He further submitted that the purpose of purchasing the stamp paper was shown as “affidavit” whereas what was executed on the stamp paper was a GPOA. He further submitted that on a reading of all the clauses of the said document, it is clear that defendant no.1 accepted K. N. Shaikh as owner of the suit property. He further submitted that if all the rights of the owners were delegated to defendant nos.1 and 3 by the said document on 10 December 2016, then there was no reason for defendant no.1 to execute another document with defendant no.21-Sultana on 31 December 2016. This could be only to cover up the fraud and fabrication done by the defendants.

30. The learned senior counsel, Mr. Sancheti also emphasized the fact that K. N. Shaikh was a seasoned businessman owning thousands of acres of land across the State of Maharashtra and therefore, he knew the value of the suit property. He submitted that such a seasoned person would not give up his possessory title and all rights,

by the document dated 10 December 2016, for a mere paltry sum of Rs.35 lakhs. This itself casts a doubt on the genuineness of the document dated 10 December 2016.

31. The learned senior counsel, thereafter, made submissions on the document dated 31 December 2016 executed by defendant no.21-Sultana in favour of defendant no.1. He submitted that although this document was lodged for registration on payment of stamp duty of approximately Rs.2 crores, the same was never registered. He further submitted that under this document defendant no.21 was paid Rs.72 lakhs. He submitted that defendant no.1 incurred a total cost of around Rs.2.72 crores in execution of this document but defendant no.1 allegedly paid only Rs.35 lakhs to K. N. Shaikh under the document dated 10 December 2016. This is itself shocking because the owner was paid only Rs.35 lakhs and the alleged power of attorney holder was paid Rs.72 lakhs and stamp duty of about Rs.2 crores is paid on the document with alleged power of attorney holder and no stamp duty (except Rs.100/-) was paid on the main document dated 10 December 2016. The document dated 10 December 2016 is not registered whereas the document dated 31 December 2016 was lodged for registration but was never registered, although on a reading of both these documents, it is clear that the same relate to the transfer of rights, title and interest in the immovable property.

32. Mr. Sancheti, further submitted that if by document dated 10

December 2016 which is prior to 31 March 2017, the possessory title was already acquired then the justification for executing the document on 31 December 2016 with defendant no.21 is highly questionable and casts a doubt on the whole *modus operandi* of contesting defendants. He referred to the documents annexed to the plaint in support of this submission. He further submitted that the document dated 31 December 2016 records that the defendant will depute its own security after the execution of this document. He submitted that the document dated 31 December 2016 refers to an IGPOA bearing Registration No.BDR-6 4665/2010 which is not to be found in the Sub-Registrar's office and this is confirmed by the counsel appearing for the said authority, who has produced a GPOA with the same registration number. The said counsel for the registration authority-defendant no.17 has confirmed that the document titled "Irrevocable General Power of Attorney" is a fabricated one and a fraud has been committed on the authorities.

33. Mr. Sancheti, further submitted that the document of 31 December 2016 admits the possessory title of K. N. Shaikh. He submits that if 10 December 2016 document is genuine, then why on 31 December 2016 the defendants have recognized the possessory title of K. N. Shaikh. He submitted that the document of 31 December 2016 is on the premise that there is an IGPOA in favour of defendant no.21, which has been found to be false and therefore, the Deed of Assignment of Possession and Possessory Title executed on 31 December 2016 too has to be false and tainted with fabrication and

fraud.

34. Mr. Sancheti, learned senior counsel, tried to connect the dots to prove the proximity between the *modus operandi* leading to forceful dispossession and repossession incidents. He referred to paragraph 37 of the written statement to indicate that the document of 31 December 2016, though executed on 31 December 2016 was registered on 15 April 2017 and the incident of forceful dispossession of the plaintiff and repossession by the plaintiff occurred between 17 April 2017 to 22 April 2017. He submitted that the Court should look into totality of the factors for testing the genuineness of the documents which are under consideration.

35. He further submitted, relying upon the written statement, that the contesting defendants were aware about the partnership firm consisting of K. N. Shaikh. He submitted that the reasons given by the contesting defendants for executing the 31 December 2016 document which is mentioned in paragraph 41 of the written statement is nothing but a cover up since by their own showing under the 10 December 2016 document, the defendants had acquired all rights, title and interest including possessory rights and there was no reason to execute the 31 December 2016 document since there was no claim raised by defendant no.21. He submitted that this also indicates the forgery and the *modus operandi* adopted by the contesting defendants.

36. Mr. Sancheti, learned senior counsel, also handed over a tabular statement showing discrepancies between the GPOA dated 19 May 2010 and the alleged IGPOA dated 19 May 2010 (registered on 25 May 2010), to demonstrate that the IGPOA is fraudulent.

37. Learned senior counsel, Mr. Sancheti referred to the document in Suit No.158 of 2024, to demonstrate that in the year 2010, three suit properties were agreed to be sold for approximately Rs.7 crores, whereas in 2016, the defendants want the Court to believe that on payment of Rs.35 lakhs, K. N. Shaikh has surrendered all his rights. This itself demonstrates that the document dated 10 December 2016 is not a genuine document. He further relied upon the Agreement for Sale dated 11 September 2010 to submit that the defendants were aware that the plaintiff and his firm were in possession of the suit property. He further submitted that defendant no.1 was trying to create animosity and break the family of K. N. Shaikh since defendant no.1 in this agreement was trying to acquire 90% of the share in the suit property from the children of K. N. Shaikh so that balance 10% can be easily acquired from K. N. Shaikh. Mr. Sancheti, learned senior counsel, also relied upon clauses (y) and (cc) of the said agreement in support of this submission.

38. Learned senior counsel, Mr. Sancheti, thereafter, referred to Exhibit 'G' in Suit No.158 of 2024, being an Agreement for Sale dated 11 September 2010 (which never fructified) between Pooja Land and Premises Pvt. Ltd. and defendant no.3. He referred to three properties

which were described in the said agreement which form part of present three suit properties, and submitted that in this agreement, K. N. Shaikh was proposed to be given approximately Rs.23 crores and the consideration for sale of all the three properties was agreed at Rs.71 crores. He submitted that if in 2010, K. N. Shaikh was proposed to be given Rs.23 crores then it is unbelievable that on 10 December 2016, K. N. Shaikh would agree to give up all his rights, title and interest in the suit properties for only Rs.35 lakhs.

39. Mr. Sancheti, learned senior counsel referred to clauses (h) and (i) of the aforesaid agreement to show that defendant no.1 was aware that K. N. Shaikh was not only in adverse possession of the suit property but also the owner by adverse possession. He further referred to clauses (ee), (ff), (gg) and (kk) to show that defendant no.1 was aware about the partnership firm M/s. Shaikh Constructions and its partners and reconstitution of the said firm and death of two sons of K. N. Shaikh resulting into the sole surviving partner becoming the proprietor of the firm.

40. He further referred to clause (oo) to submit that K. N. Shaikh had a 10% interest in the firm and his three children had the remaining 90% interest in the firm. He further referred to clause (yy) to show the fact of possession with K. N. Shaikh. He submitted that all the warranties, representations etc., made by Pooja Land and Premises Pvt. Ltd. were confirmed by defendant no.1 in the said agreement, which also contemplates an eventuality where Pooja Land and

Premises Pvt. Ltd. fails to obtain possession of the property from K. N. Shaikh. He therefore, submitted that defendant no.1 had full knowledge of the firm, full knowledge of the true worth and price of the suit property and knowledge of the adverse possession by K. N. Shaikh.

41. Mr. Sancheti also referred to internal page 24 clause (ii), page 25 clause (v), page 26 clause (vi) and page 34 paragraph 16 of the aforesaid agreement in support of his submission that defendant no.1 was aware of everything relating to the property insofar as K. N. Shaikh is concerned. He submitted that, therefore, defendant no.1 cannot contend that he is a *bona fide* purchaser for value without notice, since he had full notice of the possession of K. N. Shaikh, the price and firm.

42. Mr. Sancheti, thereafter, referred to the Court Receiver's Report dated 26 November 2019 which is annexed to Interim Application (L) No.31248 of 2025, in Suit No.502 of 2023. This report was relied upon to demonstrate that in November 2019, when the Court Receiver had taken inspection of the suit premises, the stone crushing machines of K. N. Shaikh, quarrying activities of K. N. Shaikh, eight to nine boards of K. N. Shaikh and various persons working for K. N. Shaikh were present. This was in support of his contention of backward and forward possession, resulting in continuous possession.

43. He further relied upon the said interim application filed in Suit No.502 of 2023 and submitted that defendant no.1 in February 2017 made an application to the Stamp Authorities for adjudication of value of the suit properties in which the contesting defendants had admitted that they do not have physical possession and based on this representation and admissions, discounts were obtained by the defendants in valuation of the property. He further referred to Site Inspection Report of February 2017 wherein the Stamp Authorities had admitted that K. N. Shaikh and others were in adverse possession/possession of the suit property. He, therefore, submitted that in February 2017, the statutory authorities and defendant no.1 have admitted that possession was with K. N. Shaikh, and hence the document dated 10 December 2016 cannot be a genuine document by which it is contended that the possession was handed over to defendant no.1 by K. N. Shaikh or possessory rights could have been sold to defendant no.1. He submitted that there is no positive proof by defendant no.1 of having obtained possession from 31 March 2017 till the forceful possession on 21 April 2017.

44. Mr. Sancheti, thereafter, referred to the written statement filed in Suit No.367 of 2023 by defendant no.1 and more particularly paragraph 21 to submit that the fact of possession by K. N. Shaikh is admitted by the defendants. He further submitted that in the said paragraph, there is nothing mentioned from November 2016 to March 2017 during which the Stamp Authorities had taken inspection of suit properties on application of defendant no.1, wherein it is admitted

that the possession was not with them.

45. He further relied upon paragraphs 72 and 75 of the written statement and submitted that if the Defendant No.22-Mr. Manpreet Singh Bajaj occupying approximately 1340 sq.mtrs. of land was paid Rs.1,05,00,000/-, then it is unbelievable that K. N. Shaikh, who was in possession of the entire property, would agree for only Rs.35 lakhs to give up all his rights. He further submitted that the security charges itself were running into lakhs and even this fact can be considered to demonstrate that the consideration of Rs.35 lakhs in the document dated 10 December 2016, should shock the conscience of the Court, at least in equity. He further submitted that from a reading of paragraph 75, it is clear that till 17 April 2017, the security agencies of K. N. Shaikh were at the site and consequently, the plaintiff was in possession on 17 April 2017.

46. He further referred to paragraph 7(iii) read with 7(i) of the aforesaid written statement to submit that the defendants have accepted that K. N. Shaikh was unauthorisedly occupying the larger property which is the subject matter of the present suit. He further submitted that in paragraph 7(x), defendant no.1 has contended that they had erected an iron gate only after the death of K. N. Shaikh and after the document dated 31 March 2017, though defendant no.1 was in possession on 10 December 2016 itself. He submitted that if totality of the factors and circumstantial *prima facie* admissions and evidence

are considered, then it is unbelievable that the possession was taken on 10 December 2016. Referring to the said written statement, Mr. Sancheti, learned senior counsel, submitted that in paragraph 15, the defendants have accepted that since 1979, K. N. Shaikh was in forceful possession of the suit property, which proves the claim of the plaintiff by adverse possession.

47. Mr. Sancheti, thereafter, relied upon the decision of the Hon'ble Supreme Court in the case of *Raja Gounder & Ors. Vs. M. Sengodan & Ors.*³ and more particularly paragraphs 16 to 23 to submit that admission is the best evidence and in the facts of the present case, at least at interim stage, this admission should be considered for granting appropriate relief to the plaintiff. He also relied on the said decision to contend that the admission of predecessor is binding on successor. He further relied upon the decision of the Supreme Court in the case of *State of Andhra Pradesh & Ors. Vs. Star Bone Mill and Fertiliser Company*⁴ and more particularly, paragraph 21 on forward and backward continuity of possession which is satisfied in the present case by the plaintiff and, therefore, it is his contention that the plaintiff was in possession till 21/22 April 2017. He submitted that till today, there are no eviction proceedings taken out by the contesting defendants against the plaintiff which supports his case, read with all admissions and evidence referred to above, that the plaintiff was in possession on 21/22 April 2017.

3 (2024) 12 SCC 350

4 (2013) 9 SCC 319

48. Learned senior counsel, Mr. Sancheti relied upon the decision of the Supreme Court in the case of ***Suraj Lamp and Industries Private Limited Vs. State of Haryana & Anr.***⁵ and more particularly paragraphs 20 and 24, to contend that the documents which are required to be stamped and registered, but have not been adequately stamped and/or registered cannot be relied upon by the defendants. He also relied upon Section 34 of the Maharashtra Stamp Act, 1958 in this connection and the decision of the Madras High Court in the case of ***Balakrishnan & Anr. Vs. Chandra Sekharan***⁶. He submitted that the document dated 10 December 2016 is not adequately stamped and not registered whereas an identical document with defendant no.21-Sultana dated 31 December 2016 has been stamped and lodged for registration.

49. Mr. Sancheti submitted that the document dated 10 December 2016 by which the defendants contend that the possession was given to them, suffers from five infirmities :-

- (i) the consideration is sham,
- (ii) the possession was not handed over,
- (iii) it makes a reference to an IGPOA which is forged and fabricated,
- (iv) it contradicts the document dated 31 December 2016, and
- (v) it is not adequately stamped nor registered.

5 (2012) 1 SCC 656

6 2003 SCC OnLine Mad 1081

50. Learned senior counsel relied on the decision of the Supreme Court in the case of *Yerraguntala Ramireddi Vs. Ratchepalli Atchamma & Anr.*⁷ to contend that when the consideration mentioned shocks the conscience of the Court, such a document can be treated along with the other circumstances to have been forged. He stated that by the document dated 10 December 2016, only Rs.35 lakhs were paid to the plaintiff which when compared with other documents indicates that this document is a sham.

51. Insofar as possession is concerned, Mr. Sancheti relied on following pointers :-

- (i) no possession was given on 10 December 2016,
- (ii) nobody has stated who gave the possession to whom,
- (iii) defendant no.1 in his evidence in proceedings under Section 145 Cr.P.C. states that he was not present when the document dated 10 December 2016 was executed,
- (iv) as per the document dated 31 December 2016 with defendant no.21, it is stated that the possession will be handed over post-execution of the document,
- (v) in the application to Stamp Authority dated 3 February 2017 and site visit by the Stamp Authority on 15 February 2017, possession of K. N. Shaikh is confirmed, and
- (vi) the document dated 11 April 2017 pertains only to possession of approximately 1,340 sq.mtrs. from defendant no.22

⁷ (1953) 2 SCC 21

and thereafter on 18 April 2017, the plaintiff filed a complaint with the statutory authorities in connection with forceful dispossession by the defendants.

52. Mr. Sancheti, learned senior counsel, thereafter, relied upon the statements of security guards made in the course of proceedings under Section 145 of the Cr.P.C. wherein the security guards have admitted that they were posted on duty at the suit premises on 21/22 April 2017. This shows that prior to 21/22 April 2017, the property was not in the possession of defendant no.1.

53. Mr. Sancheti, thereafter, relied upon the decision of the Supreme Court in the case of *Shanti Kumar Panda Vs. Shakuntala Devi*⁸ and the decision of this Court in the case of *Romell Housing LLP & Anr. Vs. Sameer Salim Shaikh & Ors.*⁹ and contended that the scope of enquiry under Section 145 of Cr.P.C. is summary in nature and narrower than the scope of enquiry in civil proceedings. He submitted that the learned Single Judge, in criminal revision application itself in paragraph 65, has recorded that the findings in the said order would not affect the rights of any party in civil proceedings which will be decided by the competent Civil Court in accordance with law.

54. Mr. Sancheti relied on paragraphs 10, 15, 21, 22 and 23 of the decision in the case of *Shanti Kumar Panda (supra)* to submit that this

8 (2004) 1 SCC 438

9 Criminal Revision Application No.108 of 2023 decided on 16 September 2025.

Court can give a finding contrary to what is recorded in the criminal revision application. He submitted that in the criminal revision application, the learned Single Judge has only relied upon the documentary evidence without going into the genuineness of the documents and various submissions made by him in the present case.

55. Learned senior counsel, therefore, concluded by praying for the grant of interim reliefs as sought for in the interim applications.

Submissions of Defendant no.1:-

56. Mr. Chinoy, learned senior counsel for defendant no.1 contended that on a reading of the plaint, there is no cause of action in favour of the plaintiff-firm to file the present suit and, therefore, on this ground itself, the interim reliefs prayed for are to be refused.

57. The learned senior counsel relied on paragraphs 1, 5, 7 to 9 of the plaint in support of his submission.

58. Mr. Chinoy, learned senior counsel for defendant no.1, states that the plaint has been filed by and as a sole proprietor of the partnership firm and a declaration is sought that the plaintiff be declared to be the owner of the suit property. He referred to various paragraphs of the plaint and submitted that there is no pleading that the firm was in adverse possession of the suit property. On the contrary, he submits that pleadings are contrary, as it is stated in the pleadings that K. N. Shaikh was not the one who could have

transferred the possession.

59. Alternatively, Mr. Chinoy submitted that K. N. Shaikh was a tenant who did not surrender the tenancy but at the most, continued to remain in unlawful occupation of the suit property but that would not allow him to claim title by adverse possession. He, therefore, submitted that there is no cause of action made out by the plaintiff in the present suit and, therefore, the question of granting any interim relief does not arise but on the contrary, it is a case where the plaint ought to have been dismissed.

60. Learned senior counsel, Mr. Chinoy relied on following decisions to explain what should be the constituents of adverse possession which are required to be satisfied before a person claims title by adverse possession :-

*(i) Karnataka Board of Wakf Vs. Government of India & Ors.*¹⁰

*(ii) Chatti Konati Rao & Ors. Vs. Palle Venkata Subba Rao*¹¹

*(iii) M. Radheshyamlal Vs. V. Sandhya & Anr.*¹²

*(iv) P.T. Munichikkanna Reddy & Ors. Vs. Revamma & Ors.*¹³

*(v) Nand Ram (Dead) thr. LRs. & Ors. Vs. Jagdish Prasad (Dead) thr. LRs.*¹⁴

61. He submitted that in the instant case, none of the constituents of

¹⁰ (2004) 10 SCC 779

¹¹ (2010) 14 SCC 316

¹² (2024) 13 SCC 275

¹³ (2007) 6 SCC 59

¹⁴ (2020) 9 SCC 393

adverse possession are satisfied by the plaintiff's firm or in the alternative, by the plaintiff as an individual and, therefore, the whole edifice of the plaint on the basis of which the claim of adverse possession is made should fail and no interim relief should be granted.

Reply of Mr. Godbole, Learned Senior Counsel on behalf of the Defendants in Suit Nos.367 of 2023 and 502 of 2023:-

62. Learned senior counsel adopted the legal submissions made by Mr. Chinoy which are referred to hereinabove. In addition, he made further submissions.

63. With respect to the security guards, it is his submission that the possession was taken on 10 December 2016 itself, but the defendant no.1 continued with the security guards employed by the plaintiff till April 2017 and after April 2017 employed his own security guards.

64. With respect to the issue of possession, he referred to various paragraphs of written statement and contended that by document dated 10 December 2016, defendant nos.1 and 3 were put in physical possession on that day itself. He further referred to the written statement and contended that porta cabins were also placed by defendant no.1.

65. With respect to the power of attorneys of Sultana, he states that in the allegedly forged IGPOA there is a reference to M/s. Shaikh Constructions, but in the allegedly genuine GPOA there is absolutely

no reference to M/s. Shaikh Constructions.

66. With respect to the document of 10 December 2016, he submitted that Rs.35 lakhs were paid towards possession and Rs.5 lakhs were paid towards defunct machines lying at the site and payment was made at the request of K. N. Shaikh. Mr. Godbole further submitted that K. N. Shaikh was discharged on 5 December 2016 from the hospital and his condition was stated to be stable.

67. Mr. Godbole, learned senior counsel, referred to the evidence of Adv. Diwakar before the Magistrate, wherein the said advocate gave evidence that he was employed by K. N. Shaikh in arbitration matters, and at the request of K. N. Shaikh he approached defendant no.1 and the transaction of December 2016 was executed in his office. The said evidence also records an unpleasant relationship between K. N. Shaikh and his sons. Mr. Godbole referred to various denials made by the advocate. In the said denials, the advocate denied that the documents were not read and explained. Mr. Godbole, thereafter, made submissions with respect to the place of residence of K. N. Shaikh by referring to various documents and proceedings.

68. Mr. Godbole, learned senior counsel, thereafter stated that even though Sultana was divorced by K. N. Shaikh, in the GPOA dated 19 May 2010 he has referred Sultana as his wife.

69. Mr. Godbole, learned senior counsel, thereafter made submissions on the TDS certificate and stated that it bears the name

and PAN number of K. N. Shaikh which was used for opening the bank account. He submitted that the payment of Rs.15 lakhs was made, after TDS which consisted of Rs.15,000/- as TDS and Rs.14,85,000/- which were paid to K. N. Shaikh, and since TDS amount was paid on behalf of K. N. Shaikh, therefore in the document dated 10 December 2016 it is stated that Rs.15 lakhs have been paid.

70. With respect to the justification for executing the document by Sultana on 31 December 2016 i.e. after 10 December 2016, he submitted that since defendant no.1 had invested a huge amount in purchasing the property, to avoid any further hindrance from Sultana on the strengths of the IGPOA, defendant no.1 executed the document with Sultana and paid the amount. He further submitted that the document dated 31 December 2016 with Sultana was executed to confirm the transaction and to avoid any unnecessary claims.

71. Mr. Godbole, learned senior counsel, further submitted that the conveyance dated 12 August 2009 under which ownership was acquired by defendant no.2 and the mutation entry No.7403 dated 16 November 2019 in favour of defendant no.2 has not been challenged in the present proceedings. He submitted that the partnership firm is said to have been registered on 17 August 1983 but the deed of partnership is not produced on record and the same is not even in the records of the Registrar of Firms. He submitted that Supplemental Deed of Partnership dated 18 March 1983 cannot be considered as a title document in favour of the firm.

72. With respect to the Deed of Retirement dated 21 December 2017, he contended that this document refers to the deceased person as “parties of one part” and further it falsely states that K. N. Shaikh was residing at Amir House. He submitted that the JVA dated 22 March 1980 cannot be relied upon to claim title to the suit property by the firm.

73. Mr. Godbole, learned senior counsel, thereafter, made submissions on the JVA dated 22 March 1980, wherein it is recorded that K. N. Shaikh had access to road for the purpose of his quarries and the same would continue to be used by him for the said purpose. He submitted that if K. N. Shaikh claims to have title by adverse possession then it is incomprehensible to have such an averment in the JVA. He further stated that the said JVA records that the respective group will make the title of their respective lands marketable and clear all defects and shall bear the expenses of developing the land equally. He, therefore, submitted that such a document cannot be relied upon for claiming adverse possession. He further submitted that the properties which are not the subject matter of the present suit proceedings were also part of the JVA agreement.

74. Mr. Godbole, learned senior counsel, thereafter referred to certain documents to show that the relations between K. N. Shaikh and his sons were not cordial.

75. With respect to the document dated 10 December 2016, Mr.

Godbole, learned senior counsel relied upon the evidence of the notary before the Magistrate to prove the execution of the said document. He also referred to certain photographs taken in the office of the advocate in support of the execution of the said document. He submitted that all the witnesses to the documents were examined before the Magistrate and the fees of the advocate were also paid by using funds received under the said document. He, therefore, submitted that the document dated 10 December 2016 was validly executed. He referred to the charge sheet of the CBI and the high-handedness of the police authorities which were the subject matter of criminal writ petition.

76. With respect to adjudication proceedings before the Stamp Authority, Mr. Godbole, learned senior counsel, submitted that different documents with respect to different areas were submitted under different challans on different dates from August 2016 to November 2016, and since the documents were for adjudication only, the phrase "Draft of conveyance" was used. He submitted that on the advice of the Stamp Authority, various requests made for adjudication were withdrawn and fresh adjudication for conveyance was submitted on 30 January 2017 for 16,691 sq.mtrs. on 1 February 2017 for 13,501 sq.mtrs. and the conveyance deed for 11,039 sq.mtrs. was submitted on 3 February 2017.

Submission of Defendants in Suit No.502 of 2023 :-

77. Mr. Godbole, learned senior counsel, submitted that false statements have been made in the aforesaid suit stating that the plaintiff obtained the knowledge of various documents challenged in the suit only on 5 March 2018. He further submitted that papers and proceedings in criminal proceedings were already within the knowledge of the plaintiff since April 2017. He submitted that the plaintiffs appeared in various criminal proceedings and in criminal writ petition in September and October 2017 and therefore, it is incorrect to state that the plaintiff acquired knowledge of the documents only on 5 March 2018. He further submitted that the suit is *ex facie* barred by limitation. The plaintiff has sought to take cover of COVID by which limitation period was extended. He also submitted that there is no foundation in the pleadings for making out a case of adverse possession and there is no challenge to the Deed of Confirmation dated 3 July 2010, on the basis of which name of Pooja Land and Premises Pvt. Ltd. was entered in the revenue records.

78. Mr. Godbole, learned senior counsel, further submitted that there are not even basic pleadings to sustain the claim of adverse possession except for the vague and bald statements made in the plaint. He further submitted that the Deed of Settlement dated 31 January 1991 cannot be relied upon to claim adverse possession since under the said agreement K. N. Shaikh was to pay Rs.7.5 lakhs and there is no averment that such an amount was ever paid by K. N. Shaikh. He further submitted that there is no averment that K. N. Shaikh brought the alleged ownership of the suit property into the

firm and the same is not supported by any balance-sheet, tax returns etc. He submitted that based on the Deed of Settlement, the unregistered JVA and the Supplemental Deed of Partnership dated 18 March 1983, no *prima facie* case is made out for seeking interim relief and, therefore, the issue of balance of convenience and irreparable loss does not arise.

79. Mr. Godbole, learned senior counsel, relied upon the following decisions in support of his submission on the importance of pleadings when it comes to adverse possession and also in support of his submissions that if there is no *prima facie* case, the question of adjudicating on interim relief on the ground of balance of convenience and irreparable loss does not arise:

*(i) Abubakar Abdul Inamdar (dead) by LRs. and Ors. vs. Harun Abdul Inamdar and Ors.,*¹⁵

*(ii) Parwatabai vs. Sonabai and Ors.*¹⁶

*(iii) D.N. Venkatarayappa and Anr. vs. State of Karnataka and Ors.*¹⁷

*(iv) Hemaji Waghaji Jat vs. Bhikhabhai Khengarbhai Harijan and Ors.*¹⁸

*(v) Gujarat Bottling Co. Ltd. and Ors vs. Coco Cola Co. and Ors*¹⁹

15 (1995) 5 SCC 612

16 (1997) 1 SCC 531

17 (1997) 7 SCC 567

18 (2009) 16 SCC 517

19 (1995) 5 SCC 545

80. Mr. Godbole, learned senior counsel, thereafter, referred to the decision in the case of *Gulabchand Daulatram Agarwal (supra)* of the Bombay High Court, which was also relied upon by the learned counsel for the plaintiff, Mr. Sancheti, and brought to my attention paragraph 18 wherein the Court has observed that normally a person in adverse possession cannot take advantage of the weakness of the title of the defendant.

81. Mr. Godbole, learned senior counsel therefore, concluded by praying for dismissal of the interim applications filed by the plaintiff.

Rejoinder of the Plaintiff:-

82. Mr. Sancheti, learned senior counsel for the plaintiff, in rejoinder submitted that all facts relating to the tenancy agreement, Amir's Joint Venture Agreement, and formation, constitution and reconstitution of the firm have been pleaded in the plaint. He further submitted that from 1980/1983 till 2006, the original owners have not taken any steps for eviction of the plaintiff. He submitted that if the plea of tenancy is accepted, then it is not a case of eviction because it is a tenancy in perpetuity and no eviction proceedings have been taken till today, coupled with the fact that in the plaint, written statement and the documents annexed to the pleadings, the fact of firm having not paid any rent and that K. N. Shaikh is in forceful possession, clearly shows that the plaintiff has satisfied the ingredients of adverse possession. Mr. Sancheti submitted that in the written statement the

contesting defendants have accepted that they had the knowledge of the firm of which K. N. Shaikh was a partner, and therefore, whenever in the plaint reference is made to K. N. Shaikh, it should be construed as being a partner of the firm.

83. He referred to Suit No.158 of 2024, wherein the vendors of the contesting defendants have said that K. N. Shaikh is in adverse possession of the suit property.

84. On a query raised by the Court, the learned senior counsel, Mr. Sancheti produced a letter dated 3 May 2018 addressed to the Central Bureau of Investigation, wherein the plaintiff had requested the authority to investigate the fabrication of the document and more particularly, the IGPOA.

85. Mr. Sancheti, learned senior counsel, concluded by stating that the pleadings are specific and give all the details of the firm, its reconstitution and its present status. The pleadings also state that the firm has taken over the suit property in the year 1980/1983. The original owners have not taken any proceedings for eviction from 1980 to 2006, which is more than 12 years and the 2006 document states that K. N. Shaikh is in forceful possession and in any case, the tenancy is in perpetuity and the plaintiff cannot be dispossessed without due process of law, and therefore, the possession of the suit property has to be handed over by the Court Receiver to the plaintiff.

86. Mr. Sancheti, referring to page 1345, submitted that by virtue of the JVA document, the starting point of adverse possession by the firm is 1980 and since the firm was in adverse possession and nothing was done till 2006, it shows adverse possession. K. N. Shaikh's right of access was continuing in his individual capacity. Mr. Sancheti, thereafter, referred to the Partnership Deed of 18 March 1983 and submitted that the name of the partners and their shares are specified therein and on a reading of paragraphs 8, 9 and 16 of the plaint, the ingredients required to show *prima facie* adverse possession of the firm have been satisfied in the pleadings itself.

87. Mr. Sancheti, thereafter, referred to the written statement filed by defendant No.1 in Suit No.367 of 2023 and submitted that the contention of Mr. Godbole with respect to the adjudication proceedings does not find a place in the written statement but in the note. Mr. Sancheti, further referring to the TDS certificate stated that in the said certificate, the date of agreement referred to is not the date of 10 December 2016 and the same is not rebutted by the defendant. Mr. Sancheti, thereafter, referred to page 1216 paragraph 80 and submitted that there is an admission that the document of 10 December 2016 was not executed in the presence of the defendants. He further referred to page 1168 (vii) to submit that it is the case of the defendant that after the physical possession was handed over by K. N. Shaikh, from April 2017, the defendants started safeguarding the possession of the suit property.

88. Mr. Sancheti relied upon the decision of the Supreme Court in *Suraj Bhan and Ors. vs. Financial Commission & Ors.*²⁰ in support of his submission that a mutation entry cannot confer ownership title. He further relied upon the decision of the Supreme Court in the case of *Ram Sarup Gupta (Dead) by LRs. vs. Bishun Narain Inter College & Ors.*²¹ and submitted that the pleadings of adverse possession cannot be construed in a technical sense but have to be examined after considering all the factors and the circumstantial documentary evidence. He, therefore, concluded by praying for grant of interim relief.

89. Heard learned senior counsel for the plaintiff and defendants.

Analysis and Conclusions :-

90. On 25 September 2025, the Court and the counsel for the plaintiffs and defendants spent a substantial time on exploring an interim arrangement so that the property which is lying idle for many years in the city of Mumbai, where there is already a shortage of housing, could be developed subject to the outcome of the present suit. However, no consensus could be arrived at by the parties. At one stage, keeping in mind the time which will be taken by this Court to otherwise dispose of the civil suit finally, the Court also suggested to refer the matter to a sole arbitrator who can adjudicate the dispute between the parties finally within six months to one year. This would

20 (2007) 6 SCC 186

21 (1987) 2 SCC 555

expedite the disposal of the suit. However, there were differences of opinion on certain issues until the arbitrator can hear the application under Section 17 of the Arbitration and Conciliation Act, 1996 for interim relief/ arrangement. Therefore, even this possibility had to be ruled out by the Court. It is against this backdrop that the Court decided to hear the present interim applications.

91. Before I proceed to decide the present interim applications. It is important for me to note that in the hearing of the present matter certain forged and fabricated documents and also inadequate stamping of the documents has come to my notice and, therefore, I propose to deal with the same in the beginning.

92. In Volume IV of Suit No.367 of 2023, the plaintiffs have annexed a GPOA dated 19 May 2010 (registered on 25 May 2010) by K. N. Shaikh in favour of his ex-wife Sultana Shaikh-defendant no.21 in respect of the properties mentioned in the said GPOA which are also the subject matter of the present suit. The said GPOA bears Registration No.BDR-6 4665/2010 and the said document is stamped and registered with the registration authorities. In the same volume, at page 857 of the aforesaid suit there is another document with the same Registration No. BDR-6 4665/2010 which is titled as "IGPOA", again executed by K. N. Shaikh, allegedly in favour of Sultana Shaikh-defendant no.21 on 19 May 2010. The said document is also claimed to be registered with the registration authority on 25 May 2010.

93. On a comparison of these two documents bearing the same registration number and the endorsement by the Collector of Stamps being identical, it is noticed that the two documents are materially different in various aspects. In GPOA the signature is in English, whereas in the IGPOA signature is in Urdu. There is a difference in the alignment of the photographs of the person. The font and clauses are also different. In one document, ration card is annexed and in another the same is missing. The witnesses are also different. Therefore, on noticing these differences, Mr. Takke, counsel for the defendant nos.17 to 19 was directed by the Court to ascertain from the registration office as to which document is in their records out of the two. The learned counsel enquired from the registration office and produced the document with the said Registration No.BDR-6 4665 of 2010 which is the GPOA. The learned counsel for defendant nos.17 to 19 submitted that in their records with the said registration number, there is no document by the name of IGPOA. Defendant no.17 has filed an affidavit in reply dated 13 October 2025 through Mr. Vasant Roham in which this fact is confirmed and has assured the Court that appropriate actions will be taken.

94. On 3 May 2018, the plaintiff informed the Central Bureau of Investigation, New Delhi and Navi Mumbai (CBI) of the aforesaid facts of two different registered documents with the same number and brought to their notice the forgery and fabrication. The plaintiff requested the CBI to investigate the forgery and fabrication of the

aforesaid two documents. It appears that the Central Bureau of Investigation did not conduct any investigation into the fabrication of these two documents, since nothing has been shown to me. If this is true then it is a very sorry state of affairs for the prime investigating agency of this country, which has a catastrophic impact on account of inaction by this agency.

95. It is important to note that there is a government seal on both these documents with an emblem. Based on the IGPOA, property transactions have been executed in favour of the contesting defendants. In my view, this is a very serious matter and defendant no.17 should have examined and investigated the fraud played on the State Exchequer by using the seal of the Government. In our country, rarely we find a land with a clear title because of various fabrication and fraud in the land transactions which go both undetected and unattended and when detected our investigative/implementation agencies are too slow to bring the culprits to book to justice which encourages such persons to commit more frauds and cheat the general public and government agencies. This has to end some day and this Court will be failing in its duty if the fraud and fabrication which have come to its notice are not carried to their logical conclusion and the persons involved are not tried and punished in accordance with the law. The State should consider what steps should be taken with speed whenever such frauds are committed, though it is not possible to stop frauds but a deterrent effect should at least result in fear being instilled to reduce the same.

96. Therefore, I request the Advocate General of the State of Maharashtra to entrust the best investigation officer in the police department with high caliber to examine this fraud. The reason behind this is that the suit property is a huge chunk of land and it will put many innocent people in trouble and further such a practice should not be encouraged. Our implementation agencies should enforce the law in a manner that the action taken acts as a deterrent for others who play such fraud which puts everybody at risk. The economic and social consequences of such frauds are very serious and unimaginable, putting savings of hard-earned money at risk. It is important to note that contesting defendants paid huge amount to defendant no.21 to ensure there is no hindrance in the title of the property. But when in 2019, in evidence proceedings before the Magistrate, doubt was cast on the IGPOA, a prudent businessman would take steps to verify whether the IGPOA, on the basis of which they had paid huge sum to defendant no.21, was genuine. This casts doubt on the conduct of defendants to contend that they were under a *bona fide* belief. Assuming they were so, nothing stopped them to enquire the genuineness of IGPOA from 2019. At least this could have raised suspicion on the said document. In the proceedings in Criminal Writ Petition No.3214 of 2017, filed by defendant nos.1 and 3, reply was filed by Sameer Shaikh wherein doubts were raised on POA in favour of Sultana. I leave it at that without commenting further.

97. This Court, looking at the gravity of the matter, proposes to

monitor the progress of this investigation on a regular basis to ensure that the investigation is taken to its logical end and the people involved are punished in accordance with law. Therefore this matter will be posted before the Court every month for supervising the progress of the investigation. Also, all the documents executed subsequently on the basis and strength of such IGPOA are to be treated as *non-est*.

98. In the present suit, there is a document executed on stamp paper of Rs.100/- which is titled as GPOA dated 10 December 2016, executed by K. N. Shaikh in favour of defendant nos.1 and 3 and others. The said document is at page 967. In this document, it is stated that K. N. Shaikh, the occupant/possessor having exclusive uninterrupted use of the property referred to therein, has given the GPOA to do various acts with respect to the immovable property forming part of the said GPOA. The Stamp Authorities should adjudicate whether the stamp duty paid on this GPOA is in accordance with the provisions of the Maharashtra Stamp Act, 1958 prevalent at that point of time. The investigation should be with respect to payment of adequate stamp duty on this document after ascertaining true nature of the document. *Prima facie*, it appears that this document is under-stamped since it deals with the POA with regard to immovable property. Therefore, the Court orders confiscation of this original document and directs defendant no.17 to adjudicate the correct stamp duty leviable on the said document and take actions for

recovery of deficit stamp duty alongwith interest and penalty. The Stamp Authorities should impound this document under the Maharashtra Stamp Act for proper adjudication.

99. Similarly, defendant nos.1 and 3 have executed on 10 December 2016, the Deed of Assignment cum Surrender of Possessory Title and Physical Possession of the property referred to in the said document. The document is at page 887 of the Suit No.367 of 2023. The said document is executed on a stamp paper of Rs.500/-. On a *prima facie* reading of this document, it appears that what is being transferred is the title in the immovable property and not mere possession. The original document, therefore, is directed to be impounded by the Stamp Authorities and defendant no.17 is directed to adjudicate the correct stamp duty leviable thereon, and if there is any deficiency then appropriate action in accordance with law should be initiated for recovery of the deficit stamp duty along with interest and penalty, if any.

100. In the aforesaid document dated 10 December 2016, there is a reference in clause (d) to an IGPOA registered on 25 May 2010 in favour of Sultana which as observed above does not exist and necessary action is already directed to be taken. The document at page 545 of Suit No.367 of 2023 which is a Deed of Assignment of Possession and Possessory Title dated 31 December 2016 has been executed based on an IGPOA registered on 25 May 2010 in favour of Sultana-defendant no.21. The above IGPOA as per the affidavit in

reply of defendant no.17 does not exist. I have already directed appropriate investigation on this issue. However, if such an IGPOA does not exist then the consequent execution of the document based on such IGPOA also would be void. I have expressed my opinion on this issue because if such a document is allowed to exist and not treated as void then all the subsequent transactions will be treated as legal and valid even if they are executed on the basis of an IGPOA, which does not exist. Therefore, in the larger interest, I have expressed my views on this document.

101. In this matter, *prima facie*, there are a lot of documents which are highly questionable but at this stage I am not adjudicating. Suffice to say that the land title documents should be a matter of concern for the State, which is enshrined with the duty of protecting citizens of this country under the Constitution of India.

102. It is a settled position that for the grant of interim relief, the plaintiff has to show *prima facie* case, balance of convenience and irreparable loss.

103. Now, I propose to deal with the submissions on interim reliefs. The first issue which requires to be considered is whether the plaintiff has pleaded a “cause of action” by way of adverse possession to claim title over the property. Before I examine the facts of the present case, I deem it fit to refer to certain decisions of the Hon’ble Supreme Court, relied upon by Mr. Chinoy, wherein the ingredients required for the

satisfaction of the claim by way of adverse possession by the person claiming so and the nature of pleadings required in the plaint are discussed.

104. In ***Karnataka Board of Wakf (supra)*** , the Hon'ble Supreme Court in paragraph 11 has observed as under :-

“11..... Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession.”

(emphasis supplied)

105. In ***Chatti Konati Rao & Ors. (supra)***, the Hon'ble Supreme Court in paragraph 12 reproduced paragraph 20 of the decision in the case of ***T. Anjanappa Vs. Somalingappa***²² which reads as under :-

"20. It is well-recognised proposition in law that mere possession however long does not necessarily mean that it is adverse to the true owner. Adverse possession really means the hostile possession which is expressly or impliedly in denial of title of the true owner and in order to constitute adverse possession the possession proved must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owner's title must be peaceful, open and continuous. The possession must be open and hostile enough to be capable of being known by the parties interested in the property, though it is not necessary that there should be evidence of the adverse possessor actually informing the real owner of the former's

22 (2006) 7 SCC 570

hostile action."

(emphasis supplied)

106. The Hon'ble Supreme Court in paragraphs 14 and 15 of ***Chatti Konati Rao & Ors. (supra)*** further observed as under :-

*"14. In view of the several authorities of this Court, few whereof have been referred above, what can safely be said is that mere possession however long does not necessarily mean that it is adverse to the true owner. It means hostile possession which is expressly or impliedly in denial of the title of the true owner and in order to constitute adverse possession the possession must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The possession must be open and hostile enough so that it is known by the parties interested in the property. **The plaintiff is bound to prove his title as also possession within twelve years and once the plaintiff proves his title, the burden shifts on the defendant to establish that he has perfected his title by adverse possession.** Claim by adverse possession has two basic elements i.e. the possession of the defendant should be adverse to the plaintiff and the defendant must continue to remain in possession for a period of twelve years thereafter.*

*15. Animus possidendi as is well known is a requisite ingredient of adverse possession. **Mere possession does not ripen into possessory title until the possessor holds the property adverse to the title of the true owner for the said purpose. The person who claims adverse possession is required to establish the date on which he came in possession, nature of possession, the factum of possession, knowledge to the true owner, duration of possession and that possession was open and undisturbed.** A person pleading adverse possession has no equities in his favour as he is trying to defeat the rights of the true owner and, hence, **it is for him to clearly plead and establish all facts necessary to establish adverse possession.** The courts always take unkind view towards statutes of limitation overriding property rights. The plea of adverse possession is not a pure question of law but a blended one of fact and law."*

(emphasis supplied)

107. In ***M. Radheshyamlal (supra)***, the Hon'ble Supreme Court

reproduced the relevant paragraphs from the decision in the case of ***M. Siddiq (Ram Janmabhumi Temple) Vs. Suresh Das***²³ in paragraph 13 which reads as under :-

“13. As far as the plea of adverse possession is concerned, a Constitution Bench of this Court in M. Siddiq (Ram Janmabhumi Temple-5 J.) v. Suresh Das, in paras 1142 and 1143 has held thus :

“1142. A plea of adverse possession is founded on the acceptance that ownership of the property vests in another against whom the claimant asserts a possession adverse to the title of the other. Possession is adverse in the sense that it is contrary to the acknowledged title in the other person against whom it is claimed. Evidently, therefore, the plaintiffs in Suit No. 4 ought to be cognizant of the fact that any claim of adverse possession against the Hindus or the temple would amount to an acceptance of a title in the latter. Dr Dhavan has submitted that this plea is a subsidiary or alternate plea upon which it is not necessary for the plaintiffs to stand in the event that their main plea on title is held to be established on evidence. It becomes then necessary to assess as to whether the claim of adverse possession has been established.

*1143. A person who sets up a plea of adverse possession must establish both possession which is peaceful, open and continuous possession which meets the requirement of being **nec vi nec claim and nec precario**. To substantiate a plea of adverse possession, the character of the possession must be adequate in continuity and in the public because the possession has to be to the knowledge of the true owner in order for it to be adverse. These requirements have to be duly established first by adequate pleadings and second by leading sufficient evidence. **Evidence, it is well settled, can only be adduced with reference to matters which are pleaded in a civil suit and in the absence of an adequate pleading, evidence by itself cannot supply the deficiency of a pleaded case.** Reading Para 11(a), it becomes evident that beyond stating that the Muslims have been in long, exclusive and continuous possession beginning from the time when the Mosque was built and until it was desecrated, no factual basis has been furnished. This is not merely a matter of details or evidence. A plea of adverse possession seeks to defeat the rights of the true owner and the law is not readily accepting of such a case*

unless a clear and cogent basis has been made out in the pleadings and established in the evidence.”

(emphasis supplied)

108. In ***P. T. Munichikkanna Reddy (supra)*** in paragraphs 31 to 33, the Hon’ble Supreme Court observed that dates as to when the paper-owner got dispossessed is an important aspect to be considered. Referring to the decision of ***S. M. Karim Vs. Bibi Sakina***, the Hon’ble Supreme Court in paragraph 31 reproduced the observations made in that case which reads as under :-

“31. Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found. There is no evidence here when possession became adverse, if it at all did, and a mere suggestion in the relief clause that there was an uninterrupted possession for ‘several 12 years or that the plaintiff had acquired ‘an absolute title’ was not enough to raise such a plea. Long possession is not necessarily adverse possession and the prayer clause is not a substitute for a plea.”

109. Further in paragraph 33, it is observed by referring to the decision in the case of ***Karnataka Board of Wakf (supra)*** that a plaintiff filing a title suit should be very clear about the origin of title over the property. He must specifically plead it and whenever the plea of adverse possession is projected, inherent in the plea is that someone else was the owner of the property.

110. In ***Nand Ram (dead) through Lrs. & Ors. (supra)***, the Hon’ble Supreme Court in paragraphs 29, 31, 34 and 38 observed that a

person who is inducted as a lessee for certain period and on the expiry of the said period, even if the lessee has not paid rent, the status of the lessee would not change during the continuation of the expiry of period of lease since the lessor had a right to seek possession in terms of the lease deed and the mere fact that the lessor had not chosen to exercise that right will not foreclose the rights of the lessor as owner of the leased property and the status of the lessee, on expiry of lease period, will be that of tenant at sufferance and not a tenant holding over.

111. The Hon'ble Supreme Court in aforesaid decision further observed that the possession post expiry of the lease may be unlawful or litigious possession but it cannot be considered to be settled possession. He is akin to a trespasser though initially he had a lawful entry. In paragraph 34, the Supreme Court further observed that a tenant who has been let into possession cannot deny his landlord's title, however defective it may be, so long as he has not restored possession by surrender to his landlord. In paragraph 38, the Hon'ble Supreme Court referred to a Single Bench decision of the Delhi High Court in *MEC (India) (P) Ltd. Vs. Inder Maira*²⁴ wherein it was observed that a lessee continues to be liable to the lessor till possession has been actually restored to the lessor and in law, there is a presumption in favour of the continuity of the tenancy and against the possession of the tenant becoming adverse. It is further observed therein that the doctrine of tenant estoppel which continues to

24 1999 SCC OnLine Del 422

operate even after the termination of the tenancy debars a tenant who had been let into possession by a landlord, from disputing the latter's title or pleading adverse possession, without first openly and actually surrendering possession of the tenanted premises and restoring them to the landlord.

112. In paragraph 42 of the said judgment, the Hon'ble Supreme Court observed that continuous, open and hostile possession to the knowledge of the true owner for a continuous period of 12 years is required to be proved for claiming adverse possession and in the absence of any evidence of hostile possession to the knowledge of the true owner at any time before or after the award and without surrendering possession before ascertaining hostile, continuous and open title to the knowledge of the true owner, the question of adverse possession is not tenable.

113. Similar views as expressed above have been reiterated in other decisions relied upon by the learned senior counsel Mr. Godbole. Therefore, to avoid repetition I do not propose to reproduce the same.

114. Now, I propose to deal with the submissions made on behalf of the contesting defendants that the present suit by the plaintiff as a proprietor of a firm does not disclose any "cause of action" because no pleadings are made as to how the firm came to be in adverse possession but on the contrary, the pleadings are otherwise. This being a preliminary issue for the grant of relief, I propose to deal with the

same at the very outset. In this connection, it is necessary to examine the plaint and the facts pleaded therein but before that it is necessary to understand what does one mean by “cause of action”.

115. Cause of action is a bundle of facts that gives the plaintiff the right to relief against the defendant. It is mandatory for the plaintiff to aver all material facts in order to get relief. If the plaint does not disclose a clear right to sue, then no cause of action can be said to have accrued in his favour. The plaintiff must prove its case on the averments made in the plaint. The test is whether the statements made in the plaint, taken to be correct in their entirety, would entitle the plaintiff to a decree. The plaint must disclose a clear right to sue. The plaint should disclose a cause of action by scrutinising the averments in the plaint. The true test is to read the plaint to ascertain a cause of action in favour of the plaintiff. It should give a party the right to judicial interference on his behalf. It means a factual situation the existence of which entitles one person to obtain relief against another person. The issue of existence of cause of action is a question of fact based on a reading of the plaint. The averments in the written statements as well as the contentions of the defendants are wholly immaterial while considering cause of action. A clear right must be made out in the plaint and not illusory drafting to create the cause of action.

116. The suit is filed by the plaintiff as a proprietor of M/s. Shaikh Constructions. The said M/s. Shaikh Constructions' present status (as

per the plaint) can be derived from the JVA dated 22 March 1980 between Nensey Group, Shaikhs and Shahs. In the said JVA, the names of the partners and their share of profits are mentioned. The name of the firm was agreed to be M/s. Shaikh Constructions. The properties mentioned in the JVA are in addition to the suit properties with which I am concerned. Furthermore, in the said JVA, it is specifically mentioned that each of the groups will make the title of the respective land marketable and clear all defects at their own respective cost. It further states that the said lands described in first and second schedule shall be deemed to be the property of the partnership. The properties referred to in the first schedule is the subject matter of the present suit. In the said JVA, it is mentioned that K. N. Shaikh, party of seventh part had an access in the form of a road through the suit property which is being used for his quarries and the same will continue to be used by him for the said business without any break, interruption or interference. The said firm underwent reconstitution from time to time on account of retirement, death etc. and ultimately resulted into sole surviving partner treating himself as the sole proprietor of M/s. Shaikh Constructions.

117. In paragraph 5 of the plaint, the plaintiff has stated that the plaintiff was in use, possession and occupation of the said property for a long time since about 1971. After the JVA there was reconstitution of the firm M/s. Shaikh Constructions on account of retirement and death of various partners as mentioned in paragraph 19 of the plaint. Resultant entity as per said paragraph is the sole proprietor of

partnership firm since 23 January 2017 because of death/retirement of all partners except one. As per paragraph 19 of the plaint, if by the JVA the firm was formed in the year 1980, then I fail to understand as to how such a firm who now claims to be a sole proprietor, can be said to be in use, possession and occupation of the suit property since 1971, when the firm was not even in existence.

118. In paragraph 5, it is further stated that the original plaintiff firm was a sole proprietorship of K. N. Shaikh who was carrying on business in the name of M/s. Shaikh Constructions since 1960. This averment is contrary to any principle of law. Merely because in 1960 K. N. Shaikh in his individual capacity was running the business in the name of Shaikh Constructions, it cannot be said that the partnership firm as per the JVA of 22 March 1980 was a sole proprietor in the year 1960. A proprietorship and a firm are two distinct entities though in law, a firm does not have a separate legal existence. Even in the JVA, there is nothing mentioned to this effect that the sole proprietor firm of K. N. Shaikh as an individual is getting converted into partnership firm by the same name by induction of new persons as partner. A sole proprietor firm cannot be "M/s". The phrase "M/s" is always used in case of partnership firm. Therefore, the averment made in paragraph 5 of the plaint cannot be accepted to trace the existence of the firm prior to 1980.

119. In paragraph 5, it is stated that K. N. Shaikh in his individual capacity had a tenancy agreement since 1975 which entitled the

individual K. N. Shaikh right of access in perpetuity over the land to be used for carrying on the business of quarry, since K. N. Shaikh was doing business of quarrying on the land which was adjacent to the suit property. The tenancy agreement is in favour of individual K. N. Shaikh and not in favour of the partnership firm which never existed prior to 1980. It is not the case in the plaint that tenancy was transferred to the firm.

120. In the Agreement of 10 December 1979, Pereiras-defendant nos.4 to 16 agreed to sell the land to M/s. Amir Constructions on “as is where is basis”. In the said agreement it is mentioned that M/s. Amir Constructions is aware of right of access by quarry owners for using their cars, lorries etc. Even in this document there could not have been and there is in fact no reference to the firm, but the reference is only of the fact that quarry owners are having right of access on the land of vendors and the purchaser is aware of the same. It is not the case of the plaintiff that tenancy agreement was converted and was assigned in favour of the partnership firm.

121. In paragraph 6, the plaintiff admits that K. N. Shaikh, pursuant to the tenancy agreement, constructed roads of ingress and egress and various structures etc. and, therefore, the said land became part of K. N. Shaikh’s quarry operations. At this stage also, the plaintiff who is a sole proprietor of the firm was not in existence and it is specifically pleaded that the tenancy agreement is only in favour of K. N. Shaikh individually.

122. In the first sentence of paragraph 8 which reads that the original plaintiff was not aware of the aforesaid transaction of 1979 until K. N. Shaikh was approached by the said Amir Constructions, reference to the word “original plaintiff” in the said sentence is to the firm because the plaint proceeds that it is being filed as a sole proprietor of the firm. Furthermore, in 1979 the firm was not even in existence and, therefore, the question of it being aware does not arise. The plaint has used the name of K. N. Shaikh and M/s. Shaikh Constructions interchangeably which has created confusion.

123. In paragraph 8, there is reference to the terms and conditions of the JVA dated 22 March 1980 and it is stated that since K. N. Shaikh has a tenancy right over the property which was sold to Amir Constructions, K. N. Shaikh, M/s. Nensey and Shah Groups entered into the JVA. It is important to note that in the JVA, what is mentioned is that K. N. Shaikh only has a right of access.

124. In paragraph 8, it is contended that the firm (original plaintiff) acquired exclusive possession of the entire land covered in the JVA and thereafter the firm has not recognised the erstwhile owners as the owners of the land and has also not paid any rent. Except making a bald statement there is not a single documentary evidence informing the original owners by the firm that they are not recognizing the original owners as owners of the land or how the firm came into possession of the suit property. On 22 March 1980, it cannot be said that individual-K. N. Shaikh had acquired ownership title by adverse

possession which he brought into the firm in the year 1980. This is so because the tenancy agreement is of the year 1975 and the JVA is of the year 1980, and the period between the two is less than 12 years, and therefore, claim of adverse possession in 1980 could not have granted title in favour of K. N. Shaikh.

125. On 10 December 1979, defendant no.4 to defendant no.16 entered into Articles of Agreement with M/s. Amir Constructions for the sale of the suit property but since M/s. Amir Constructions did not pay full consideration, the said agreement got frustrated and, therefore, no rights, title or interest in the suit property got transferred to M/s. Amir Constructions. There is nothing shown to me that indicates that M/s. Amir Constructions completed the transaction of 10 December 1979 by making full payment to defendant no.4 to defendant no.16. In the JVA dated 22 March 1980, M/s. Amir Constructions admits that 10 December 1979 document is only an agreement to purchase. Therefore, M/s. Amir Constructions could never have brought this property into the partnership firm. Therefore, in the JVA it is mentioned that each group will perfect its marketable title. There is nothing on record shown to me by which M/s. Amir Constructions perfected its title under the agreement of 10 December 1979 to treat the suit property as a property of the firm M/s. Shaikh Constructions. Therefore, plea of adverse possession by the firm cannot be accepted. Nothing is shown to me which would indicate that M/s. Amir Constructions took possession under 10 December 1979 which the firm continued to claim adverse possession of. On the

contrary, in the document of 30 December 2006 between defendant no.4 to defendant no.16 and defendant no.2 in paragraph (s), it is stated that M/s. Amir Constructions assigned its rights to K. N. Shaikh, the individual, and this individual has taken forceful possession. Therefore, the basis of the claim of title by adverse possession by the firm (original plaintiff) cannot be accepted as a cause of action.

126. However, in the agreement of 30 December 2006 between defendant No.2 and defendant Nos.4 to 16, all these defendants have stated and agreed that K. N. Shaikh has taken forceful possession of the plot and K. N. Shaikh represents rights, title and interest of Amir Constructions which is assigned to K. N. Shaikh. Even in this agreement, there is mention of forceful possession by K. N. Shaikh and assignment in favour of K. N. Shaikh and not the firm. There is no mention of the plaintiff firm having taken forceful possession.

127. The agreement of 10 December 1979 between defendant no.4 to 16 and M/s. Amir Constructions refers to K. N. Shaikh in his individual capacity. Therefore, it cannot be accepted that the defendants have admitted in the 2006 document that the firm is in adverse possession of the suit property.

128. In paragraph 12, there is averment that the firm (original plaintiff) has not paid any rent and enjoys rights, title and interest in the said property. Except a bald statement there is nothing shown to

the said effect and how the firm came into possession for claiming title by adverse possession.

129. In paragraph 13, the plaintiff has referred to the Deed of Conveyance dated 31 March 2017 between defendant nos.1 and 2. Even in the said document, the vendors have referred to Shaikh, who was carrying on unauthorised quarrying activities in the suit property without permission of the vendor and government authorities, as an individual and not firm. There is no reference to any document of adverse possession in favour of the firm (original plaintiff).

130. In paragraph 16, the firm (original plaintiff) has stated that the defendants were aware that K. N. Shaikh has been in hostile use, possession and occupation of the property from at least prior to 22 March 1980. This clearly shows that reference to K. N. Shaikh in this paragraph and plaint is to the individual and not to the firm M/s. Shaikh Constructions. In paragraph 17 again the firm (original plaintiff) admits that the forceful possession is taken by K. N. Shaikh, and therefore, reference has to be of K. N. Shaikh as an individual. Similarly, in paragraph 18, the firm (original plaintiff) refers to assignment of M/s. Amir Constructions in favour of K. N. Shaikh which again admits of K. N. Shaikh as an individual.

131. In paragraph 19, reconstitution of the firm M/s. Shaikh Constructions, constituted pursuant to the JVA dated 1980 is described, leading to a sole surviving partner who has filed the

present plaint by terming himself as a sole proprietor of M/s. Shaikh Constructions. On a perusal of the plaint, it is very clear that the plaint has been filed by a sole surviving partner of the firm M/s. Shaikh Constructions constituted by virtue of JVA dated 22 March 1980.

132. In the plaint, it is also admitted that forceful possession was taken by K. N. Shaikh in his individual capacity. K. N. Shaikh could not have become owner by adverse possession in the year 1980 since the tenancy agreement itself was of 1975 and the period of 12 years had not expired. Therefore, K. N. Shaikh could not have transferred his ownership right in the firm through a JVA in 1980. On the contrary, in the JVA right of access in favour of K. N. Shaikh is mentioned, however, the firm (original plaintiff) is trying to claim ownership by adverse title by referring to the acts of K. N. Shaikh in his individual capacity.

133. In paragraph 12, except for mentioning that the firm (original plaintiff) has not paid any rent and is enjoying the rights, title and interest in the said property, there is nothing to show that the ingredients of adverse possession as culled out by various decisions of the Hon'ble Supreme Court and referred to hereinabove are even pleaded, let alone satisfied by the firm.

134. In paragraph 51(a), the firm (original plaintiff) has stated that since 1975 onwards they are in permissive possession pursuant to the

tenancy agreement of 1975. This is incorrect because the tenancy agreement was with K. N. Shaikh in his individual capacity and furthermore the firm was established in 1980 and, therefore, was not in existence in 1975.

135. In paragraph 50, the document dated 30 December 2006 which refers to forcible possession is *qua* K. N. Shaikh as an individual and not the firm (original plaintiff). The reference in para(s) 10, 18 and 22 of said document is *qua* the individual K. N. Shaikh and not the firm M/s. Shaikh Constructions.

136. On a reading of paragraphs 47 and 48, it is clear that the plaint is filed by the plaintiff as sole surviving proprietor of the partnership firm and not as a legal heir of K. N. Shaikh, an individual. There is no evidence to support paragraph 42 to say that the firm is in peaceful and uninterrupted adverse possession for several years.

137. In paragraph 37(F)(ix), the firm has stated that K. N. Shaikh had no authority to deal with the property as the same belonged to the firm. Therefore, the firm today cannot take assistance of documents, neither prior to, nor post its formation, where K. N. Shaikh is referred to. There are no averments as to how the plaintiff is claiming adverse possession. The plaintiff has not averred or annexed any document to show that the suit property belonged to them.

138. Even in the Deed of Conveyance dated 31 March 2017 between

defendant no.2 and defendant nos.1 and 3, it is not stated that possession is with the firm M/s. Shaikh Constructions, but it is expressly stated after referring to the 1979 agreement of M/s. Amir Constructions that K. N. Shaikh as an individual was carrying unauthorised activities on the suit property. The contention of learned senior counsel, Mr. Sancheti, on behalf of plaintiffs that K. N. Shaikh would mean K. N. Shaikh as a partner of M/s. Shaikh Constructions, is not borne out from any record but is an argument made across the bar and, therefore, cannot be accepted. It is a settled position that mutually destructive pleas cannot be taken, though alternative pleas are permissible. In this case, confusion arises because the sole proprietorship entity was Shaikh Constructions and the partnership firm was M/s. Shaikh Constructions.

139. In the adjudication order dated 31 March 2017 by the Collector, it is not disputed that the possession is not with the seller but there is no statement/admission/finding that possession is with the firm M/s. Shaikh Constructions (original plaintiff).

140. In the Agreement for Sale dated 11 September 2010 (Exh.G in Suit No.158/2024) between Pooja Land & Premises Pvt. Ltd. and defendant no.3, K. N. Shaikh is referred to as “owner by adverse possession” and not the firm M/s. Shaikh Constructions, though there is a reference to the said firm and its reconstitution from time to time. The possession in this document is stated to be with K. N. Shaikh. There is a reference to a 1979 tenancy agreement between Anant

Thakur and K. N. Shaikh and thereafter it is stated that K. N. Shaikh and his firm are in possession. This does not speak of the firm M/s. Shaikh Constructions being in adverse possession.

141. As per the said agreement possession of some of the property is with K. N. Shaikh and some of the property is with M/s. Shaikh Constructions having four partners. There is no reference to how the partnership firm M/s. Shaikh Constructions came into possession and that they are owners by adverse possession. Therefore, reliance placed on this document also does not help the case of the plaintiff to claim a *prima facie* title by adverse possession. There is a difference between pleading “possession” and pleading “adverse possession”. In this case, the plea of “adverse possession” by the plaintiff cannot be found to entitle them for any relief in absence of a cause of action.

142. The issue is not whether plaintiff has pleaded about formation and reconstitution of the firm in the plaint but the issue for “cause of action” is whether the firm has pleaded the essential requirements and has *prima facie* satisfied the Court to suggest that any right to sue the defendant for claiming title by adverse possession accrues in its favour, which is absent in this case, at least for the purpose of seeking interim reliefs.

143. The firm (original plaintiff) cannot plead adverse possession by referring to acts of the individual K. N. Shaikh prior to the firm coming into existence. There is nothing post the formation of the firm to show adverse possession in favour of the firm. The main prayer in

the suit is for the declaration of title in favour of the plaintiff and when read with contents of the plaint, without satisfying the ingredients of adverse possession by the firm, in my view, at least at this stage it cannot be said that the plaintiff has *prima facie* satisfied its “cause of action” to claim any interim relief.

144. On reading of various decisions of the Hon’ble Supreme Court referred to above and relied upon by the counsel for the defendants, a person claiming adverse possession should show on what day he came into possession, what was the nature of his possession, whether the fact of possession was known to the other party, how long his possession continued and whether his possession was open and undisturbed. All these conditions have to be expressly pleaded in the plaint by the plaintiff, since the person claiming by adverse possession is trying to defeat the rights of the true owner and, therefore, there has to be clear pleadings, establishing all facts necessary in support of his claim of adverse possession. The Hon’ble Supreme Court has also observed that, a person who sets up a plea of adverse possession must establish both, first, possession which is peaceful, open and continuous, the same has to be to the knowledge of the true owner in order for it to be adverse and second, these requirements have to be duly established by adequate pleadings and by leading sufficient evidence. Evidence can be led only with reference to matters that are pleaded, and in absence of adequate pleading, evidence by itself cannot cure the deficiency of a pleaded case. In the present case, the firm has not pleaded how the ingredients of adverse possession are

satisfied by them. Mere possession by K. N. Shaikh cannot entitle the firm of which he is a partner, to claim title by adverse possession.

145. The Hon'ble Supreme Court has further observed that, it is a settled law that by pleading adverse possession, a party seeks to defeat the rights of the true owner and, therefore, there is no equity in his favour. Therefore, the facts constituting ingredients of adverse possession must be pleaded by the plaintiff. In the instant case before me, I have analysed the plaint and on the analysis of the plaint, the firm (original plaintiff) has not satisfied the ingredients laid down by the Hon'ble Supreme Court in its pleadings and, therefore, the defendants are justified in contending that, insofar as the firm is concerned, there is no cause of action and consequently, if there is no cause of action, then the question of granting any interim relief does not arise.

146. The learned senior counsel for the plaintiff, Mr. Sancheti, relied upon the decision of the Hon'ble Supreme Court in the case of ***Ram Sarup Gupta (supra)*** to contend that the pleading should not be read in technical sense, but all the surrounding circumstances should also be considered while deciding the cause of action. The learned senior counsel relied upon paragraphs 6, 9 and 15 of the said judgment.

147. In my view, the aforesaid decision is distinguishable on facts and is not applicable to the present case. In paragraph 6, the Supreme

Court itself observes that in the absence of pleading, evidence, if any, produced by the parties cannot be considered, and no party should be permitted to travel beyond its pleadings and all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleadings is to enable the adversary party to know the case it has to meet and in order to have a fair trial, it is imperative that the party should settle the essential material facts so that the other party may not be taken by surprise. In my view, these observations if applied to the case before me, by which a claim of title of adverse possession is sought to be canvassed, would cast a heavy burden on the plaintiff-firm to set out all the material facts in its pleadings which would indicate that the person filing the suit has satisfied the conditions of adverse possession laid down by the Hon'ble Supreme Court. In the present case, there are no pleadings by the firm, with respect to the facts required for satisfying the conditions of adverse possession laid down by the Hon'ble Supreme Court. The liberal approach canvassed by the Hon'ble Supreme Court would not mean that, by interchanging the use of name of a party who has no cause of action, one can claim cause of action.

148. In my view, the decision in the case of ***Ram Sarup Gupta (Supra)*** does not lay down this principle and moreso when it comes to a plea of adverse possession, the pleadings have to be tested at a high pedestal in the present case. I do not find any such pleading by the firm which satisfies the plea of adverse possession.

149. In view of above, since I have come to a conclusion that no cause of action has been shown by the plaintiff-firm against the defendants for claiming title by adverse possession, the grant of interim relief does not arise. Therefore, the Interim Application is rejected.

150. The learned senior counsel for the plaintiff Mr. Sancheti and learned senior counsel for the defendants, Mr. Godbole, have made various submissions on various documents and plea of adverse possession on merits. I have recorded the submissions, but I am not adjudicating upon the submissions since, in my view, the threshold of passing the test of “cause of action” itself has not been satisfied by the plaintiff in the present case. The adjudication on the submissions made by Mr. Sancheti and Mr. Godbole, both learned senior counsel would arise only on crossing over the hurdle of the firm (original plaintiff) having any cause of action against the defendants.

151. The decision relied upon by the learned senior counsel, Mr. Sancheti, in the case of *Gulabchand Daulatram Agarwal (supra)*, is not applicable to the facts of the present case and in the light of the decision of the Hon’ble Supreme Court referred to hereinabove on the issue of adverse possession.

152. Before parting, I may observe that since the plaint is filed by a sole surviving partner in his capacity as a sole proprietor of an erstwhile firm, I am not adjudicating the present application on the

basis that if the said plaint would have been filed by the legal heirs of K. N. Shaikh in his individual capacity, what would have been the fate of the said plaint. The views expressed herein are only for deciding whether a *prima facie* case is made out on the “cause of action” to consider grant of interim relief by sole surviving partner of the firm.

153. All three interim applications in three suits are dismissed for the reasons stated above. However, the Court Receiver appointed by the Hon’ble Supreme Court in 2019 in criminal matter continued till 16 September 2025 and by ad-interim order, Court Receiver was appointed under the order of this Court in these proceedings on 19 September 2025 and is continuing till today. Therefore, to enable both the parties to take appropriate action in accordance with law, the ad-interim arrangement/order to continue for a period of two weeks from today.

To summarise:-

- (i) The Registration Authorities should confiscate IGPOA dated 19 May 2010 and ensure that this document is not used by any person. The Investigating Officer appointed under the present order to investigate the fraud and fabrication of this document and fraud played on the State Exchequer and report the progress every month to this Court.

- (ii) Both documents dated 10 December 2016 at pages 887 and 967 of the Suit should be impounded by the Stamp Authorities under the Maharashtra Stamp Act and adjudicate the correct stamp duty on the same and on adjudication, if required, to take proceedings for recovery of differential stamp duty, interest, penalty and prosecution.
- (iii) All the three Interim Applications are dismissed for want of cause of action. However, the ad-interim orders passed in all three Interim Applications to continue for a period of two weeks to enable plaintiff and defendants to take appropriate steps in accordance with law.
- (iv) If no orders are obtained, by any of the parties, in appeal in respect of the ad-interim order passed by this Court then in that circumstances, the Court Receiver appointed in all three Interim Applications would stand discharged and he will restore the possession to the party from whom possession has been taken. The Court Receiver will stand discharged subject to payment of cost, charges etc. Order passed on 17 October in respect of security guards would also continue for a period of two weeks.
- (v) Registry is directed to forward copy of this order to the

Advocate General of Maharashtra and the Collector of Stamps.

154. All the Interim Applications are disposed of.

155. Place these Interim Applications on 15 December 2025 for apprising the Court on the progress of the investigation.

(JITENDRA JAIN, J.)

This judgment is corrected as per speaking to the minutes of the order dated 6 November 2025.