



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 4622 OF 2021

Pawanputra Janjivan Samasya Bhumi
 Vikas Gruh Nirman Sanstha Maryadit,
 Nagpur through its President
 Shri Suresh Gulabrao Choudhari age :
 52 years, Occ : Business, R/o Ayodhya
 Nagar, Near Sai Mandir, Nagpur

} **.. Petitioner**
(Original Plaintiff)

Versus

- 1) Shri Suresh Namdeorao Barsagade
 age : 35 years, Occ : Labour,
- 2) Smt Tarabai wd/o Harichandraroaji
 Kawale, age : 65 years, Occ : Nil,
 Both R/o Hudkeshwar (Kh), Post Pipla,
 Tah. and Dist. Nagpur

} **.. Respondents**
(Original Defendants)

 Mr. Shailesh Sitani, Advocate for Petitioner.

Mr. H.R.Prajapati, Advocate for respondents.

CORAM : ABHAY J. MANTRI, J.

DATED : JANUARY 10, 2025

ORAL JUDGMENT

Rule. Rule is made returnable forthwith. Heard finally,
 with the consent of the learned counsel, appearing for the parties.

(2) The petitioner/original plaintiff feeling aggrieved by the
 judgment and order dated 11/02/2020 passed by learned District

Judge – 15 and Additional Sessions Judge in M.C.A.No.230/2019, thereby allowed the appeal filed by the original defendants/respondents and quashed the order dated 23.09.2019 passed by the learned trial Court below Exh.5 in R.C.S.No.1279/2018, has filed this petition.

In brief, the facts are as under:-

(3) The petitioner Housing Society claims that it has purchased agricultural land in Khasra No.90/2, admeasuring 1H, at village Hudkeshwar (for short- '*suit premises*'). It carved out a layout on the said land and sold plots to the respective members/purchasers. On 15/06/2018, the respondents/defendants tried to disturb its peaceful possession. Therefore, it has filed suit for perpetual Injunction, wherein filed an application for a grant of temporary injunction to restrain the respondents/defendants from obstructing the suit premises till the disposal of the suit.

(4) The respondents/original defendants oppose the claim of the petitioner and contend that based on the false documents, the petitioner tried to take forcible possession of their plot No.65. It is also claimed that based on the sale deed dated 30/10/1999, they have got ownership as well as possessory right over the plot No.65. They have also constructed house on the said plot. However, under the garb of the

sale deed, the petitioner is claiming their possession over plot No.65, and therefore, they have prayed for dismissal of the petition.

(5) After considering the rival contentions, the learned trial Court granted an injunction in favour of the petitioner/original plaintiff and thereby restrained the respondents/defendants from causing obstruction and disturbance to its peaceful possession over plots No.25 and 26.

(6) Being aggrieved by the said order, the respondents/defendants had preferred Misc. Civil Appeal No.230/2019. However, the learned appellate Court reversed the said finding, holding that petitioner Housing Society failed to prove prima facie case, as well as observed that until and unless both the parties adduced their evidence, it cannot be ascertained as to whether the disputed land is plots No.25 and 26 or plot No.65 and therefore, allowed the appeal and quashed the order passed by the trial court below application Exh.5 for a grant of temporary injunction. The petitioner/original plaintiff Society has been aggrieved by the same and preferred this petition.

(7) Mr. Shailesh Sitani, learned Counsel for the petitioner, vehemently contended that the respondents are not claiming their rights over plot Nos.25 and 26 and, therefore, on that ground alone,

the petitioner is entitled to the relief as prayed. The learned trial Court has rightly considered the said fact, discussed it in detail, and held that the petitioner is not claiming that plots No. 25 and 26 correspond to plot No.65 and, therefore, granted a temporary injunction. However, the learned appellate Court erred in observing that the boundaries mentioned in the sale deed correspond with the area claimed by the respondents and plots No.25, 26 and 65 are in the same layout. They are not adjacent to each other; therefore, it observed that until and unless both parties adduced their evidence, it could not be ascertained whether the disputed land is plot Nos.25 and 26 or plot No.65. The said finding appears contrary to facts on record. Therefore, the said finding cannot be sustained in the eyes of the law. Hence, he urged for allowing the petition by setting aside the impugned order. Hence, he prayed for allowing the petition.

(8) *Per contra*, learned counsel for the respondents strenuously argued that the learned appellate Court has rightly considered the respondents' claim and held that the petitioner is not entitled to the relief as claimed and, therefore, no interference is required. He further drew my attention to the layout plan, which is part and parcel of the plaint, and submitted that said layout plan was prepared in respect of Khasra No.90 and not 90/2; therefore, the petitioner/plaintiff Society is not entitled to claim relief based on the

said layout plan. Moreover, the layout plan is not authenticated or sanctioned; therefore, it is not helpful for the petitioner to claim their rights based on the said layout. Consequently, he submitted that no interference is required in the judgment and order of the appellate Court. Hence, he urged for the dismissal of the petition.

(9) I have appreciated the rival contentions of the parties and perused the impugned orders and records.

(10) It is pertinent to note that the defendants have not pleaded that plots No.25 and 26 correspond to plot No.65 or Khasra No.90 is converted into Khasra No.90/2 and therefore, his alleged plot No.65 comes under the Khasra No.90/2. Besides, they do not claim that the Petitioner Society is claiming its right over plot No.65 under the garb of plots No.25 and 26.

(11) On a specific query put to the learned counsel for the respondents/defendants, he failed to point out from the record that his plot No.65 or Grampanchyat House No.65 is located in Khasra No.90/2. However, he fairly admitted that the respondents/original defendants have no concern with the layout plan demarcated by the petitioner Housing Society in Khasra No.90/2. Still, they claim their right solely based on the sale deed, which Bhimrao Sahadeo Bawangade executed

on 30/10/1999 and entries in Namuna 8 of Grampanchayat. Perused the same, *prima facie*, it appears that by said sale deed, respondent No.2 Tarabai purchased House No.65 in Khasara No.90. Similarly, the Namuna 8 produced by him denotes that the name of respondent No.2 Tarabai is recorded as owner and possessor in respect of Grampanchayat House No.65. It is pertinent to note that petitioner Housing Society is claiming that plot Nos.25 and 26 are the open plots, no construction exists on the said plots. On the contrary, respondents/defendants claim that they have constructed a house on plot No.65 of Grampanchayat in khasara No.90.

(12) *Furthermore*, in the layout plan, it is mentioned that the petitioner Society demarcated or carved out plots in Khasara No.90/2, but learned counsel for the defendants has fairly admitted that they have no concern with the layout of the petitioner Society. It seems that the petitioner is claiming rights with respect to plots No.25 and 26, as shown in the Society's layout. Notably, the petitioner is claiming its right based on the sale deed. The petitioner Society has also produced a copy of the 7/12 extract of Khasara No.90/2 on record, wherein the Society's name has been recorded as owner and possessor of the 1H land. In Khasara No.90/2, the respondents' names do not appear as owners or possessors. If respondent's plot No.65 is located in Khasara No.90/2, then respondent No.2's name would have been recorded in

the 7/12 extract of Khasara No.90/2. Also, the respondents/defendants must have produced documents concerning the same, but they failed to show that plot No.65 is located in Khasara No.90/2.

(13) It is pertinent to note that the Petitioner Society is claiming relief based on the sale deed and layout, which was carved out by it in Khasara No.90/2. The respondents/defendants have not claimed any relief regarding the layout plan. Their grievance is that the petitioner Housing Society, based on the false and fabricated documents claiming its right over plot No.65. However, the defendants have not produced any material to demonstrate or to substantiate their defence. If Petitioner Society were claiming right over plot No.65, then the respondents/defendants would have mentioned the fact in the written statement; they might have denied it. Non-pleading the fact that plots No.25 and 26 correspond to plot No.65 leads to drawing adverse inferences against the defendants.

(14) The learned Trial Court, after considering the documents on record in para 6, held that the latest 7/12 extract produced on record shows that the plaintiff Housing Society is in possession of the said layout plan and same is situated in Khasara No.90/2 and not in Khasara No.90 in which the defendants are claiming that their plot No.65 is located. Therefore, it granted the injunction. The order passed

by the Trial Court was well-reasoned. On the contrary, the learned appellate Court has not considered the said fact and erred in reversing the well-reasoned order, observing that the defendants' prima facie showed their possession over the disputed land. The said observation primarily appears contrary to the facts on record.

(15) In addition, the petitioner Society is claiming right over the open plot; on the contrary, the respondents claim that they have constructed a house on their plot. In such circumstances, it cannot be said that the petitioner is claiming relief over plot No.65. Therefore, the findings recorded by the learned appellate Court appear to be contrary to the facts on record, as well as the settled position of law and those findings cannot be sustained in the eyes of the law.

(16) In the aforesaid background, it appears that the learned appellate Court erred in holding that to ascertain as to whether the disputed land is plot Nos.25,26 or plot No.65. The learned appellate Court has not considered the fact that the petitioner Society is not claiming the relief over the plot No.65, but claiming against the plot Nos.25 and 26, which are located in the Housing Society's layout plan in Khasara No.90/2 and not in Khasara No.90. Therefore, the said finding is liable to be quashed and set aside.

(17) As a result, I deem it appropriate to allow the present petition in the following terms:-

1. The writ petition is allowed.
2. The impugned judgment and order dated 11/02/2020 passed by the learned District Judge-15 Nagpur in M.C.A.No.230/2019 is hereby quashed and set aside, and the order dated 23/09/2019 passed by the learned 14th Jt. C.J.S.D. Nagpur, below Exh.5 in R.C.S. No.1279/2018, is hereby confirmed.
3. No order as to costs.
4. Rule is made absolute in the above terms.
5. Inform the concerned Courts accordingly.

[ABHAY J. MANTRI, J.]

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