



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 2793 OF 2020

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|--|--|-------------------|
| 1) | Moreshwar S/o Natthuji Mohture,
Aged about 50 years, Occ.– Agriculture, | (Ori. Deft. No.1) |
| 2) | Gajanan S/o Natthuji Mohture,
Aged about 55 years, Occ.– Agriculture, | (Ori. Deft. No.2) |
| 3) | Khemchand S/o Natthuji Mohture,
Aged about 57 years, Occ.– Agriculture, | (Ori. Deft. No.3) |
| Petitioner Nos.1 to 3, R/o. Wannjara,
Nagpur, Tahsil & District Nagpur. | | |
| 4) | Smt. Prabhabai Wd/o Wamanrao Kukde,
Aged about 48 years, Occ.- Household,
R/o. Mahalle Layout, Yerkheda,
Tahsil Kamptee, District Nagpur. | (Ori. Deft. No.6) |
| <u>PETITIONERS.</u> | | |

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| 1) | Samalochan Ekta Co-opertive Housing
Society Ltd., Through its President,
Mahboob S/o Shaikh Ismail,
Having its office at Satranjipura,
Nagpur. | (Ori. Plaintiff) |
| 2) | Tahsildar, Nagpur Rural,
Near Vasantrao Deshpande Hall,
Civil Lines, Nagpur. | (Ori. Deft. No.7) |
| <u>RESPONDENTS</u> | | |

Mr. Madhur Deo, Advocate for Petitioners.
Mr. A. A. Madiwale, Assistant Government Pleader for
Respondent No.2.

CORAM : ABHAY J. MANTRI, J.

DATE : 07th JANUARY, 2025.

ORAL JUDGMENT.

1. Heard learned Advocate Mr. Madhur Deo, for the petitioners and learned Assistant Government Pleader Mr. A. A. Madiwale, for respondent No.2. None present for respondent No.1, though served.

2. **Rule.** Rule made returnable forthwith.

3. The petitioners are challenging the judgment and order dated 30.07.2020, passed by the learned Ad-hoc District Judge-2, Nagpur, in M.C.A. No. 47/2020, whereby confirmed the order dated 02.01.2020, passed by the learned 14th Joint Civil Judge, Senior Division, Nagpur, below Exhibit-5 and Exhibit-68, in Regular Civil Suit No.692/2014, thereby granted an injunction in favour of the plaintiff and restrained the defendants/petitioners from carrying out any construction and from creating third party interest over the Suit property.

4. Brief facts of the plaintiff's case are as under :

(i) The claim of the plaintiff, i.e. respondent No.1 herein, is a Society registered under Section 9(1) of the Maharashtra

Co-operative Societies Act, 1960. The father of defendant Nos.1 to 6, late Natthuji Chimanji Mohture, was the exclusive owner of 4 acres of Khasra No.109, out of 7.31 HR. (total 18 Acres), situated at Wanjra, Nagpur. It further appears that Natthuji Mohture, from time to time, sold out 14.50 Acres of land by registered sale deeds in favour of the plaintiff Society. Also, Natthuji Mohture executed an agreement to sell of the remaining portion of 4 acres of land in favour of the plaintiff vide Agreement to Sale dated 09.02.1999. Based on the two documents, the plaintiff is in possession of the suit property.

(ii) Defendants Nos.1 to 6 are the legal heirs of Natthuji Mohture, who were aware of all the transactions between Natthuji Mohture and the plaintiff Society. However, defendant Nos.1 to 5 have executed a Relinquishment deed in favour of defendant No.6. Based on the said Relinquishment deed, defendant No.6 mutated her name in the Revenue Record. She claimed her right over the remaining 4 acres of land; therefore, the plaintiff filed the suit for specific performance of the contract against the defendants, wherein it filed applications Exhibit 5 and 68 for grant of injunction.

5. The defendants resisted the plaintiff's claim, contending that no agreement to sale, as alleged by the plaintiff, has been

executed in their favour at any time. Both the documents are forged and fabricated, and based on the said two documents, the plaintiff could not get any right in the suit property, and therefore, they denied that the plaintiff is in possession of the said 4 Acres of land. On the contrary, they claimed that they were in possession of the said 4 Acres of land and, therefore, they prayed for the dismissal of the applications Exhibit-5 and Exhibit-68.

6. After hearing both parties, the learned Trial Court, by order dated 02.01.2020, allowed the applications Exhibit-5 and Exhibit 68, thereby restraining the defendants from making any construction on the Khasra No.109/1, admeasuring 3.26 HR and also restrained from creating third party interest over the suit property. Being aggrieved by the said order, the defendants have preferred the Misc. Civil Appeal No.47/2020 before the learned Ad-hoc District Judge -2, Nagpur. After considering the documents on record, the learned Ad-hoc District Judge 2 dismissed the appeal by confirming the order passed by the learned Trial Court. Being aggrieved by the same, the defendants/petitioners have preferred this petition.

7. The learned Advocate, Mr. Madhur Deo, for the petitioners vehemently contended that no agreement to sale, as

alleged, was executed in favour of the Society, and, therefore, the Society could not get any right to possess the said property. He further submitted that the plaintiff had filed a Regular Civil Suit No.5115/2012 by claiming relief of specific performance of the contract against the defendants in the said suit. The plaintiff had filed an application for a grant of injunction against the defendants in that suit, wherein the Court, after considering the documents on record, held that the plaintiff failed to make out the *prima facie* case and, therefore, rejected the said application. He also drew my attention to para Nos.8 and 9 of the said order. He submitted that the Court in the said suit has categorically observed that the plaintiff Society is claiming their right based on the agreement of sale dated 01.02.1999. However, the said agreement to sale was unregistered, and the stamp papers were purchased on 09.02.1999; therefore, the Court has raised doubt about the execution of the said agreement to sale. Hence, the learned Advocate for the petitioners submitted that the plaintiff filed another suit and in the said suit, he claimed a similar relief; therefore, the plaintiff is not entitled to the relief as prayed. However, the learned Trial Court, as well as the learned First Appellate Court, has not considered the said facts in its proper perspective and has erred in granting an injunction against them.

Hence, he urged to allow this petition by setting aside the order passed by the learned Trial Court and the First Appellate Court.

8. At the outset, it appears that the original owner, Natthuji Mohture, executed eight different sale deeds from 1987 to 2001, in which he sold 14.50 Acres of land in favour of the plaintiff Society. According to the plaintiff, Natthuji Mohture also executed an Agreement to Sale dated 09.02.1999 of the remaining 4 acres of land in its favour, and, therefore, based on said document, they have the possessory right over the said property.

9. It is pertinent to note that all the sale deeds and agreement to sell were executed between 1987 and 2001, and the suit was filed in 2014, i.e. after 14 years. On query put to the learned Advocate for the petitioners to show their possession over the disputed property, at that time, the Advocate for the petitioners has invited my attention to the 7/12 extract in respect of Khasra No.109/1, wherein the name of defendant No.6/petitioner No.4 has been recorded as owner. However, in the cultivation column, the said land is shown as barren, except that no other document has been pointed out by the learned Advocate for the petitioners to show that the petitioners are in possession of the disputed property.

10. On perusal of the order passed below Exhibit-5 and 68, passed by the learned Trial Court, it reveals that after considering the documents, the learned Trial Court held that the plaintiff has made out a *prima facie* case to grant an injunction and accordingly granted the injunction, thereby defendants were restrained temporarily from make out any construction on the land of Khasra No. 109/1, till the decision of the suit and not to create any third party interest. The said order was passed on 02.01.2020, and the First Appellate Court confirmed the order on 30.07.2020.

11. By this order, the learned Trial Court has directed the defendants not to make out any kind of construction over the disputed property till the disposal of the suit, as the plaintiff is claiming its right over the disputed property as a possessor. The said order would not cause any harm to the defendants, but by this order, the further multiplicity of the proceedings will be curtailed.

12. Considering the aforesaid facts and documents on the record, I do not find any illegality or perversity in the impugned orders. On the contrary, the impugned orders appear well-reasoned and require no interference in the writ jurisdiction. Thus, in my view,

the petition, being devoid of merit, is dismissed with no order as to costs. Rule is discharged.

13. Inform the concerned Courts accordingly.

(ABHAY J. MANTRI, J.)

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