



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION NO.3118/2024

Sanjay s/o Namdeo Dhanokar,  
Aged about 60 years, Occ. Business  
R/o Kasarkhed, Balapur,  
Tq. Balapur, District Akola.

... PETITIONER

...VERSUS...

1. Dipak Kumar Narayan Sharma  
Aged about 62 years,  
Occ. Agriculturist,  
R/o Narayan-pura, State Bank  
Road, Balapur, Tq. Balapur,  
District Akola.
2. Sau. Pooja Dipak Kumar Sharma  
Aged about 65 years,  
Occ. Agriculturist,  
R/o. Narayan-Pura, State Bank  
Road, Balapur, Tq. Balapur,  
District Akola.

...RESPONDENTS

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Shri S.V. Sohoni, Advocate for petitioner  
Shri Amol S. Mardikar, Advocate for respondent Nos.1 and 2  
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CORAM : SMT. M. S. JAWALKAR, J.

DATE OF RESERVING THE JUDGMENT : 13/03/2025

DATE OF PRONOUNCING THE JUDGMENT: 17/03/2025

JUDGMENT

. Heard learned Counsel for petitioner and learned Counsel for respondents.

2. Being aggrieved by the order dated 16/04/2024, passed by the learned District Judge-3, Akola, the instant petition is being preferred. The suit property is 2 shops situated on Nazul Plot No. 2750, Nagar Parishad Ward No. 7/4, property No. 102, having area 112 sq. ft. and property No. 103 having area 48 sq. ft. constructed of stone, clay and bricks having roof of tin sheets. Originally, the suit property was owned by Harishankar Balchandra Sharma and father of the petitioner by name Namdeo Haribhau Dhanokar was tenant of Shri Sharma. Namdeo was doing tailoring profession in these shops and used to pay rent to the landlord. Sometime he used to send rent by money orders. The landlord had never given any receipt of rent. On 18/07/2000, the father of the petitioner died and petitioner continued the business of tailoring in the said premises as a tenant of original landlord and he used to pay the rent to the landlord. The respondents and one another person broke the door and removed the material from property No. 102. They also committed theft of material as well as sewing

machines and also the cash. The petitioner tried to lodge a report with the Police Station, Balapur but, the respondents being influential persons, the police has not taken any cognizance of it. Again three persons sent by the respondents removed the tin sheets of the property No. 103 and removed the door of the shop and the material in the shop. They also tried to demolish the walls of the shop and threatened the sons of the petitioner of dire consequences. The petitioner thereafter lodges a report with the Police Station, Balapur.

3. The petitioner was constrained to file the suit for Permanent and Mandatory Injunction against the respondents before the Court of Civil Judge, Junior Division, Balapur. The said suit was registered as Regular Civil Suit No. 9/2024. Along with the plaint dated 20/02/2024, petitioner has also the filed separate application for under Order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure for grant of temporary injunction. The petitioner claimed the relief of temporary injunction for directing the respondents and persons claiming through them for not disturbing the peaceful possession of the petitioner over the suit

property till the decision of the suit. He has also made a prayer seeking direction to the respondents to re-fix the door and tin roof of the suit shops and or in alternative permit the petitioner to re-fix the door and tin sheets of the suit shops.

4. On 07/03/2024, the learned Civil Judge, Junior Division, Balapur, allowed the temporary injunction application Exh. 5 and restrained the defendants i.e. the present respondents temporarily from disturbing the possession of the plaintiff till the decision of the suit and also permitted the plaintiff to restore the previous condition of the suit shops himself. The respondents filed an appeal under Order 43 Rule (1) (r) of the Code of Civil Procedure. The said appeal was registered as Misc. Civil Appeal No. 28/2024. The Learned District Judge 3, Akola, allowed the appeal of respondents and set aside the order dated 07/03/2024, passed by the learned Trial Court and dismissed the application Exh. 5, in Regular Civil Suit No. 9/2024. Hence, the present petition is filed.

5. The contention of the petitioner is that learned First Appellate Court has not properly exercised the Jurisdiction vested

in it and has erred in law in setting aside the order of the learned Trial Court, whereby, the temporary injunction was granted to the petitioner and therefore, the impugned judgment and order passed by the learned First Appellate Court being unjust and illegal and is liable to be set aside. Further, it is requested that the order of learned Trial Court be restored and maintained. It is contended that the learned First Appellate Judge has observed that the tax receipts from the year 2008 upto 2012 shows that the property owner was Mr. Harishankar Sharma and the possessor was Namdeo Dhanokar i.e. father of the petitioner. The learned First Appellate Judge has observed that in written statement, the defendants have mentioned about the termination of the tenancy and handing over the vacant possession of shop No. 103 to previous owner i.e. Harishankar Sharma prior to the year 2013. It is further contended that the learned First Appellate Judge has come to the conclusion that the tenancy is not continued in last 12 years on the ground that (i) Plaintiff does not claim having paid rent to the defendants in past 4 years; (ii) Plaintiff does not produce any rent receipt issued by the prior owner in past 12 years; (iii) Plaintiff does not filed affidavit of the prior owner about the receipt of rent and (iv) Plaintiff does not

make the previous owner as party defendant in the present suit.

6. It is contention of the respondents that suit and application for temporary injunction are totally false and it is only filed to harass the defendants Nos. 1 and 2 with intention to grab the money. The suit property which is very dilapidated condition and not able for any use since from long back. The father of plaintiff due to very dilapidated condition of the suit property Malmatta No. 103 have vacated and handover the possession of the same to the previous owner Harishankar Baluram Sharma and since from 2013 and thereafter the suit property never been used by father of plaintiff and plaintiff himself for tailoring business. All these facts are rightly taken into consideration by the learned authorities below and passed an appropriate order which needs to be confirmed.

7. Learned Counsel for the respondents relied on *Anathula Sudhakar Vs. P. Buchi Reddy (dead) by LR's and others (2008) 4 SCC 594*.

8. I have heard both the parties at length. Perused judgment of Trial Court as well as Appellate Court. Considered citation relied on by the respondents.

9. The petitioner filed RCS No. 9/2024, along with Exh.5 for grant of temporary injunction. The learned Trial Court allowed the application and restrained the defendants from disturbing the possession of plaintiff till decision of the suit. The learned Trial Court only on the basis of contention of plaintiff that his case is based on non issuance of rent receipts to him. It is also the observation of the learned Trial Court that there is no document shown by the defendant to terminate the tenancy in the year 2012. Thus, on the basis of Police Station Report and photograph, it comes to the conclusion that petitioner is entitled for restraintment order. Respondent challenged the same by filing Misc. Civil Appeal No. 28/2024.

10. The learned Appellate Court recorded the finding that though, it is a case of plaintiff that he is using the premises peacefully for tailoring business for past forty years. However, he

has not produced a single document about tenancy of shop/property No. 103, either between himself and the landlord or between his father and the landlord. He has also not produced any rent receipt or light bill to show his possession over the suit property, post 2012. The only document in support of the plaintiff's case is the property tax receipts from the year 2008 to 2012 in respect of property No. 103. The said tax receipt shows name of Mr. Harishankar Sharma (vendor of the defendants) as owner of the property. There is no receipt or document after the year 2012, showing existence of shop or payment of tax of the constructed structure.

11. The learned Appellate Court also observed that the photograph only shown the *prima facie* dilapidated condition and nothing else. They do not *prima facie* show that the premises was being used by plaintiff or that it has been destroyed by the defendants. The learned Appellate Court also observed that there is absolutely no evidence for continuation of tenancy after 2012. No tax receipt beyond 2012, no rent receipt for past forty years. There is no even light bill of the suit property nor any photograph about

active use of the suit property as tailoring shop. The defendants are undisputedly owners of the suit property for four years. However, plaintiff does not claim having paid rent to the defendants in past four years nor he produced any rent receipt issued by previous owner in the past twelve years. The continuation of tenancy cannot be presumed.

12. Considering all these facts, the learned Appellate Court hold that a declaration about tenancy right of the plaintiff was a must and inevitable for seeking preventive as well as mandatory injunction against the true owners, without seeking determination of his own right with regard to the suit property. The plaintiff cannot be allowed to seek perpetual injunction as well as mandatory injunction against the true owners.

13. The learned Counsel for respondent relied on judgment of **Anathula Sudhakar** (supra), wherein, suit for injunction are maintainable. In paragraph No. 21 of the judgment it is held as under :

*“21. To summarise, the position in regard to suits for*

*prohibitory injunction relating to immovable property, is as under:*

*(a) Where a cloud is raised over the plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with the plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.*

*(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.*

*(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title (either specific, or implied as noticed in Annaimuthu Thevar<sup>3</sup>). Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.*

*(d) Where there are necessary pleadings regarding title,*

*and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to the plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.”*

14. These aspects are duly considered by the learned Appellate Court and rightly allowed the appeal and rejected temporary injunction. As such, I do not see any perversity or illegality in the order passed by the learned Appellate Court. Accordingly, petition stands dismissed.

(Smt. M.S. Jawalkar, J.)

Jayashree..