

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 17387 OF 2024

Ayub Dastgir Shekh

VERSUS

Arvind Bapu Pise

...

Mr. Anil R. Kamble, Advocate for Petitioner

Mr. Rajaram Bansode (through VC) a/w Mr. Mohan M. Chavan,
Advocate for Respondents

...

CORAM : SACHIN S. DESHMUKH, J.

DATE : 1st APRIL, 2026.

P. C. :

1. The Petitioner raises an exception to the order dated 23/08/2024 passed by learned Addl. Sessions Judge, Vaduj in Exhibit 5 in Reg. Civil Appeal No. 19 of 2024.

2. The Petitioner herein is the original Plaintiff in the suit and the Respondent is the Defendant (Hereinafter, the parties shall be referred to by their original status in the suit).

3. The dispute pertains to a portion of ancestral land located in Mhaswad, Satara, identified as Survey No. 1234/5/4 (the "suit property"), measuring approximately 0=40R. The Plaintiff, holding

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a share of 1 anne 10 pai, entered into an agreement to sell a portion of this property to the Defendant for a total consideration of Rs. 14,50,000/-.

4. The Plaintiff asserts that while an initial payment of Rs. 6,50,000/- was made, the remaining balance of Rs. 8,00,000/- was to be paid in cash or through the provision of an 800 sq. ft. flat in a building to be constructed on the site. However, when the Sale Deed was executed and registered on 5/07/2011, the Defendant allegedly omitted these essential payment terms from the final document.

5. On account of Defendant's failure to make the payment, the Plaintiff presented Special Civil Suit No. 01/2014 in the Court of the Civil Judge, Senior Division, Vaduj. On 26/03/2024, the Trial Court decreed the suit in favor of the Plaintiff, declaring the Sale Deed void and cancelling it taking recourse to Section 31 of the Specific Relief Act. The Defendant was ordered to restore possession of the property within three months, while the Plaintiff was directed to refund the initial Rs. 6,50,000/-.

6. Aggrieved by the Judgment and Order dated 26/03/2024 rendered by Civil Judge Senior Division, Vaduj, the Defendant filed

R.C.A. No. 19 of 2024 along with an application (Exhibit No. 5) seeking a stay on the execution of the decree. On 23/08/2024, the Additional Sessions Judge, Vaduj, granted the stay on the grounds that an inquiry of evidence was necessary, despite the Plaintiff's formal objections.

7. Being aggrieved by the said order under challenge, the Plaintiff (Petitioner) has approached this Court under Article 227 of the Constitution of India.

8. In the backdrop of the aforesaid facts, learned counsel for the Petitioner/Plaintiff submits that the order under challenge is bad in law. It is also submitted that the Appellate Court failed to consider that the Sale Deed in question was itself declared null and void and as such, could not be relied upon. The Appellate Court also overlooked the application below Exhibit 100 in Special Civil Suit filed by the Plaintiff seeking permission to amend the Plaint in order to claim additional relief that the ownership and possession of the suit property be restored. However the same came to be rejected vide order dated 18/08/2023. Therefore, the Appellate Court while passing the order under challenge wrongly relied upon the findings given by the Trial Court while passing the order below Exhibit 100.

The Appellate Court ought to have considered that the Respondent is in the possession of the suit property and has been making profit from it without having any legal rights. As such, the order under challenge is in violation to the principles of natural justice. Hence, prayed to allow the petition.

9. Learned counsel for the Respondent/Defendant has supported the order under challenge. As such, the same is liable to be dismissed.

10. Having heard the submissions from the litigating sides and upon perusal of the record indicates that admittedly, the suit filed by the plaintiff was for declaration and perpetual injunction. The relief of possession of the disputed part of the suit property was nowhere sought for by the Plaintiff. It is only during the course of proceedings, the Plaintiff sought the relief of possession by referring an amendment application. However, the same was dismissed by the Trial Court.

11. During final adjudication, the Trial Court directed the Defendant to deliver the possession of the disputed property to the Plaintiff within three months from the date of Judgment and

Decree. As such, the factual matrix indicates that the said suit property, since the initiation of the suit till the present day is in the possession of the Defendant.

12. Considering that the Judgment and Decree of the Civil Court is under challenge before the Appellate Court.

13. The rights of the Plaintiff would be subject to the outcome of the Appeal. As such, till final adjudication of Appeal, it would be appropriate to stay the effect of decree, otherwise the very purpose of filing of an Appeal would be frustrated, therefore, no error is committed by the Appellate Court.

14. Resultantly, the Petition stands dismissed. No order as to costs.

[SACHIN S. DESHMUKH, J.]