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Misc.Civil Appeal No.28/2022
Misc.Civil Appeal No.29/2022
(Common Judgment)

MHGA010008802022



Exhibit No.

Filed on	19.10.2022
Registered on	20.10.2022
Decided on	09.08.2023
Duration	9 Month 19 Days

IN THE COURT OF PRINCIPAL DISTRICT JUDGE, GADCHIROLI
(Presided over by U.B. Shukla)

Misc. Civil Appeal No.28/2022

Umesh s/o Vasantrao Poreddiwar,
Aged about 62 years, Occ.: Cultivation,
R/o. Dhanora road, Gadchiroli,
Tahsil and District : Gadchiroli ..

Appellant
(Org. Defendant)

..versus..

1] Smt. Anusaya Narsayya Ganwenwar,
Aged about 68 years, Occ. : Cultivation,
R/o. Subhash Ward, Gadchiroli,
Tahsil & District : Gadchiroli

2] Smt. Shantabai Gopalrao Bhandekar,
Aged about 69 years, Occ. : Cultivation,
R/o. Sonapur Complex, Gadchiroli,
Tahsil & District : Gadchiroli ..

Respondents
(Org. Plaintiffs)

Shri A.B. Batwe, Learned Advocate for the Appellant
Shri Ajit Labhe, Learned Advocate for the Respondents

**APPEAL UNDER SECTION 96 R/W RULE 1 & 2 of ORDER 41
OF THE CODE OF CIVIL PROCEDURE**

MHGA010009402022



Exhibit No. _____

Filed on	10.11.2022
Registered on	11.11.2022
Decided on	09.08.2023
Duration	8 Month 28 Days

IN THE COURT OF PRINCIPAL DISTRICT JUDGE, GADCHIROLI
(Presided over by U.B. Shukla)

Misc. Civil Appeal No.29/2022

Principal District
Judge, Gadchiroli

- 1] **Smt. Anusaya Narsayya Ganwenwar**,
Aged about 68 years, Occ. : Cultivation,
R/o. Subhash Ward, Gadchiroli,
Tahsil & District : Gadchiroli

2] Smt. Shantabai Gopalrao Bhandekar,
Aged about 69 years, Occ. : Cultivation,
R/o. Sonapur Complex, Gadchiroli,
Tahsil & District : Gadchiroli ..

Appellants
(Org. Plaintiffs)

..versus..

Umesh s/o Vasantrao Poreddiwar,
Aged about 62 years, Occ.: Cultivation,
R/o. Dhanora road, Gadchiroli,
Tahsil and District : Gadchiroli ..

Respondent
(Org. Defendant)

Shri Ajit Labhe, Learned Advocate for the Appellants
Shri A.B. Batwe, Learned Advocate for the Respondent

APPEAL UNDER SECTION 96 R/W RULE 1 & 2 of ORDER 41
OF THE CODE OF CIVIL PROCEDURE

Common J U D G M E N T

(Delivered on this 9th day of August 2023)

1] Smt. Anusayabai Narsayya Ganwenwar and Smt. Shantabai Gopalrao Bhandekar filed Regular Civil Suit No.75/2022 against Umesh Vasantrao Poreddiwar seeking declaration that the plaintiffs are the absolute joint owners of the land being Survey no.180/2 situated at mouza Murkhala, Tahsil and District : Gadchiroli. The plaintiffs further claimed decree for perpetual injunction restraining the defendant from interfering with possession of the plaintiffs over the land Survey

no.180/2 (hereinafter referred to as ‘the suit property’). In the said suit, plaintiffs Anusayabai and Shantabai filed application below Exh.5 under Rule 1 and 2 read with Section 151 of the Code of Civil Procedure seeking relief of temporary injunction restraining the defendant Umesh from interfering with possession of the plaintiffs over the suit property.

2] The defendant Umesh appeared in the suit and opposed the suit claim. Defendant Umesh filed application (Exh.37) raising the counter relief contending that the defendant had purchased area admeasuring 81 R of land from Survey 180/1 and he is in possession thereof. The defendant sought a relief that the plaintiffs should not obstruct his possession over the suit property which is in his possession as per the sale-deed executed in the year 1981.

3] Both the applications were jointly decided by the learned Civil Judge (Junior Division), Gadchiroli by his order dated 6th October 2022. The learned Civil Judge (Junior Division), Gadchiroli did not find *prima facie* case in favour of either of the parties. The learned trial Judge did not find that either of the party would suffer irreparable loss. The learned trial Judge found that the balance of convenience is in favour of none of the parties. With these findings, the learned trial Judge was pleased to reject the application (Exh.5) filed by the plaintiffs as well as application (Exh.37) filed by the defendant.

Being aggrieved by the common order passed below Exh.5 and Exh.37 in Regular Civil Suit no.75/2022, plaintiffs preferred Misc. Civil Appeal No.29/2022 challenging the impugned order praying for setting aside of the order of rejection of her application (Exh.5). Simultaneously, defendant Umesh preferred a separate appeal being Misc. Civil Appeal No.28/2022 challenging the common order by which the application (Exh.37) filed by the defendant in the suit was rejected by the learned trial Judge. Since both the appeals challenge the same common order, the appeals are being decided by common judgment.

Facts of the case

4] It is the case of the plaintiffs that plaintiffs no.1 and 2 are the joint owners of the land Survey no.180/2 situated at mouza Murkhala, Tahsil and District : Gadchiroli admeasuring 0.81 H.R. The plaintiffs claimed to be in possession and cultivation of the suit property. It is the contention of the plaintiffs that originally suit property was granted to Domanpuri s/o Hanuwatpuri by the Government. The plaintiffs purchased the land jointly from Domanpuri vide registered sale-deed dated 11.4.1983. Since the land was granted by the Government to the original owner Domanpuri s/o Hanuwatpuri subject to restriction and since it was sold by Domanpuri to the plaintiffs without seeking permission from the

Government, the Government forfeited the suit property. The plaintiffs moved an application to the Sub Divisional Officer to return the land to the plaintiffs. The Sub Divisional Officer vide Revenue Case No.19/MRC-81/2003-2004 passed order dated 28.5.2007 and directed the plaintiffs to deposit Rs.51,435/-. The plaintiffs deposited the said amount and accordingly the plaintiffs became joint owners of the suit property.

5] The remaining portion of land Gat no.204/Survey No.180 out of an area 1.70 H.R., 0.81 H.R. land was sold by original owner Domanpuri to the defendant vide registered sale-deed dated 20.11.1981. The said land since was granted to Domanpuri by the Government subject to restriction and since it was sold by Domanpuri to the defendant without prior permission of the Government, the Government forfeited the said land. The defendant failed to get the restoration of the land to his name (as was done by the plaintiffs). It is the case of the plaintiffs that they are in occupation and possession of the suit land since 1983. Though the land was forfeited, plaintiffs continued to be in possession of the suit land and were not dispossessed lawfully by the Government. According to the plaintiffs by virtue of subsequent order dated 8.12.2007 land was restored to the plaintiffs. The plaintiffs erected cement poles around the suit property purchased by them, however defendant obstructed the possession of the plaintiffs over the

suit property. According to the plaintiffs, defendant has no title over the suit property and he is trying to forcibly take possession of the suit property. According to the plaintiffs, the defendant tried to disturb the possession of the plaintiffs over the suit property on 15.7.2022. Plaintiffs therefore lodged report against the defendant on 16.7.2022 at Gadchiroli Police Station. The plaintiffs therefore were compelled to file the suit against the defendant to seek declaration and perpetual injunction. By the application (Exh.5) the plaintiffs are seeking protection to their possession against the acts of the defendant by grant of temporary injunction.

6] Defendant objected the application of the plaintiffs for grant of injunction by filing written statement. By application (Exh.37), the defendant sought temporary injunction against the plaintiffs that the plaintiffs should not obstruct title of the defendant over area admeasuring 81 R of original land Survey no.180/1 till final disposal of the suit. In the application (Exh.37), it is the contention of the defendant that the plaintiffs have not specified boundaries of the suit property in the plaint and without specification of the boundaries of the suit property, the claim of the plaintiffs cannot be entertained. According to the defendant, he is in possession of the land subject-matter of the counter claim since the year

1981. Defendant has given boundaries of the property subject-matter of the counter claim as follows :-

- Towards East - Government land;
- Towards West - Land of plaintiffs;
- Towards North - Land of Kawdagiri and
- Towards South - Land of Dnyanpuri

7] According to the defendant, the land subject matter of the counter claim was purchased by the defendant from the original owner and since then defendant is in possession of the land subject matter of the counter claim. According to the defendant, he is cultivating the suit property but since human locality has increased in the surrounding due to laying of layout plots and due to the trouble of cattle, the defendant stopped getting paddy crop and started planting *Sag* and *Nilgiri* trees in the land subject matter of the counter claim. According to the defendant despite knowledge of this fact, the plaintiffs filed false suit claim in order to disposes the defendant.

8] The learned trial Judge considered the rival claims alongwith the documents on record and was pleased to reject both the applications (Exh.5 and Exh.37).

9] The plaintiffs are aggrieved by the impugned judgment on the ground that the learned trial Judge gave contradictory finding by saying at one place that even if

possession of the plaintiffs is *prima facie* seen, however the plaintiffs have not shown the exact location of the suit property. According to the original plaintiffs/appellants, the learned trial Judge has further recorded contradictory finding by holding that though possession and ownership of the plaintiffs can be seen from the documents, they have not mentioned the surrounding boundaries of Survey no.180 and therefore have not shown the exact portion of their possession.

10] According to the appellants/original plaintiffs, the learned trial Judge erred in holding that the plaintiffs have filed measurement map drawn by the T.I.L.R. and “C” copy of it and that the area is shown as per the 7/12 extract but the land is not demarcated and therefore the map of the T.I.L.R. cannot be taken into consideration.

11] At the same time, the defendant questioned the impugned judgment on the ground that the learned trial Judge erred in holding that the defendant has not shown actual apprehension regarding obstruction to their possession. According to the defendant, the trial Court ought to have considered the fact that the affidavit filed by plaintiff Anusaya before the Honourable High Court in the Writ Petition no.207 of 1982, para no.9 regarding possession after the order of confiscation of the land. With these and other contentions the defendant has questioned the impugned order.

12] Both the appellants have prayed for grant of their respective application (Exh.5 and Exh.37) and prayed for setting aside the impugned order passed by the learned trial Judge.

13] In view of the rival contentions of the parties, following points arise for my determination which are being answered for the reasons given herein below :-

Sr. No.	<u>Points</u>		<u>Findings</u>
1]	Do plaintiffs prove <i>prima facie</i> case for grant of relief of temporary injunction in their favour?	..	<u>Proved</u>
2]	Do plaintiffs prove that balance of convenience lies in their favour?	..	<u>Proved</u>
3]	Do plaintiffs prove that they would suffer irreparable loss, if relief of temporary injunction is not granted in their favour?	..	<u>Proved</u>
4]	Does defendant proves <i>prima facie</i> case for grant of relief of temporary injunction relating to property subject matter of counter claim in his favour?	..	<u>Not proved</u>
5]	Does defendant proves that balance of convenience lies in his favour?	..	<u>Not proved</u>

6]	Does defendant proves that he would suffer irreparable loss, if relief of temporary injunction is not granted in his favour relating to the property subject matter of the counter claim?	..	<u>Not proved</u>
7]	Whether the impugned common order passed below application (Exh.5 and Exh.37) requires interference?	..	<u>Yes</u>
8]	What order?		<u>As per final order.</u>

R E A S O N S

14] Learned Advocate Shri Labhe for the original plaintiffs submitted that the plaintiffs are the bonafide purchasers of land Survey no.180/2. According to him though the land was forfeited to the Government as the original owner did not seek permission to transfer the suit property to the plaintiffs, the land was restored to the possession and title of the plaintiffs by virtue of the order passed by the Honourable High Court in Writ Petition No.207 of 1989 (order dated 3.11.2003). He has submitted that in view of the directions given by the Honourable High Court, Collector, Gadchiroli passed order for re-grant of the suit property in favour of plaintiff Anusayabai Ganwenwar and Smt. Shantabai Bhandekar (original plaintiffs).

15] Learned Advocate Shri Labhe for the original plaintiffs further submitted that though the land was forfeited by the Government initially the plaintiffs never lost their possession and they continued their possession till the order of restoration was passed by the District Collector, Gadchiroli. According to him, the possession of the suit property which the plaintiffs have received by virtue of sale-deed dated 11.4.1983 was confirmed after the order passed by the District Collector, Gadchiroli. According to him, the defendant did not approach the Honourable High Court and did not make any claim as to re-grant of his portion of the property subject-matter of the counter-claim and he cannot claim parity unless a specific order of re-grant is passed by the District Collector against the defendant. According to him, therefore the defendant has no *locus standi* to claim any right in any part of original land Survey no.180.

16] Learned Advocate Shri Labhe for the original plaintiffs submitted that after the re-grant the suit land was measured through T.I.L.R. and in the map of T.I.L.R. shows the possession of the plaintiffs over the suit land with doted lines at page no.4. According to him, this T.I.L.R. map considered together with the sale-deed and the order of the District Collector would *prima facie* show possession of the plaintiffs over the suit property. According to him, with this background the learned trial Judge has recorded a contradictory finding in

the impugned order by saying that though the plaintiffs have *prima facie* proved their ownership over the suit property, the plaintiffs have failed to prove their exact possession over the suit property.

17] Learned Advocate Shri Labhe for the original plaintiffs submitted that the learned trial Judge has recorded contradictory finding in the impugned judgment specifically in para nos.22 to 25. He has pointed out that in para no.25, the learned trial Judge again has recorded contradictory finding that though the defendant has not proved ownership has *prima facie* shown possession in the suit property. Learned Advocate Shri Labhe for the original plaintiffs specifically referred the observations made by the Honourable High Court in para no.9 of the Writ Petition No.207/1989 (order dated 3rd November 2003). Para no.9 of the said order is reproduced as follows :

“9] There is some dispute as to whether the possession of the lands has been taken from the petitioner. Mrs. Wandile, the learned Assistant Government Pleader relied on record to show that the possession has been taken over by some time in the year 1984-85. This is strongly denied on behalf of the petitioners. In any case, even if the possession has been taken, it is made clear that it shall not come in the way of the petitioners applying for regrant and possession in pursuance of the regrant in Class-I”

18] Learned Advocate Shri Labhe for the original plaintiffs referred to and relied upon the judgment in the case of **Mulji Umershi Shah and etc. vs. Paradisia Builders Pvt. Ltd.,**

Mumbai AIR 1998 BOMBAY 87. The relevant portion of the judgment relied on by the learned Advocate for the plaintiffs is reproduced as follows :-

“Suit for injunction based on possession – Enquiry into title is not excluded. The contention that in a suit for injunction based primarily on possession, question of title cannot be gone into and therefore while considering the application for temporary injunction the only consideration before the Court was possession and not the title of plaintiff is either impressive nor sound. In the suit for perpetual injunction the Court may be called upon to hold inquiry in title, right, interest or status, as the case may be, of the plaintiff to find out whether plaintiff is entitled to protection of his possession by decree of injunction. The same consideration prima facie, is required to be seen while considering an application for temporary injunction. The question of possession presupposes lawful possession and for adjudication of that question whether finally or at interlocutory stage, inquiry into title, right, interest or status of plaintiff is not foreign to the subject-matter.”

19] Learned Advocate Shri Labhe for the original plaintiffs referred to and relied upon the judgment in the case of **Ganesh D. Daivajna vs. Prakash S. Salkar 200(3) Mh.L.J. 347.**

The relevant portion of the judgment is reproduced as follows :-

“12.In Mulji Umeridhi Shah & others v. Paradisia Builders Pvt. Ltd. Bombay and other reported in 1997(3) Mh.L.J. 532 = AIR 1998 Bombay 87, it has been held that in the suit for perpetual injunction, the Court may be called upon to hold inquiry in title, right, interest and status, as the case may be in the pleadings to find out whether the plaintiff is entitled to protection of his possession by decree or injunction. The same consideration, prima facie, is required to be seen while considering an application for temporary

injunction. The question of possession presupposes lawful possession and for adjudication of that question whether finally or at interlocutory stage, the inquiry into title, rights, interest or status of plaintiff is not foreign to the subject matter. ...”

20] Learned Advocate Shri Labhe for the original plaintiffs further relied upon the judgment in the case of **Rame Gowda (D) by L.Rs. vs. M. Varadappa Naidu (D) by L.Rs.** AIR 2004 SUPREME COURT 4609. He further relied upon the judgment in the case of **Baburao Namdeo Nalwade vs. Tukaram Keshav Nalwade** 2015(2) ALL MR 277. The relevant portion of the judgment is reproduced as follows :-

“13. In the present matter, the original plaintiff No.1 claimed that from the properties of the family, the suit property had come to him while defendant Nos.1 to 3 claimed that it was joint property which had not been divided. In such circumstance, even if defendant Nos.1 to 3 sold what they claimed to be their share to defendant Nos.4 and 5 during the pendency of the suit, possession cannot be handed over by them to the subsequent purchaser without following due procedure of law. In the matter of "Gajara Vishnu Gosavi", [2009(6) ALL MR 983(S.C.)], Hon'ble Supreme Court held that :-

"11. Thus, in view of the above, the law emerges to the effect that in a given case an undivided share of a co-parcener can be a subject matter of sale/transfer, but possession cannot be handed over to the vendee unless the property is partitioned by metes and bounds, either by the decree of a Court in a partition suit, or by settlement among the co-sharers."

Thus, even if defendant Nos.1 to 3 could originally claim to be in joint possession, the subsequent purchasers cannot simply step into their shoes as far as regards joint possession of the defendant Nos.4 and 5. They would have to seek their own remedy. Once defendant Nos.1 to 3 have admittedly given up their claim of joint possession by executing the sale deed, the possession of plaintiff of the property, as clearly appearing from the long standing 7/12 extracts, will have Appeal from Order No.4/2014 to be protected. Plaintiffs do make out a prima facie case for injunction in their favour. The appellants- plaintiffs, in the application for temporary injunction to the District Judge, raised apprehension that the defendant Nos.4 and 5 may enter their names into record of rights on the basis of the alleged sale deeds in respect of suit property. The plaintiffs expressed apprehension that they may lose possession of suit property and so, the defendant Nos.4 and 5 are required to be restrained by issuing preventive injunction. Plaintiffs claimed that, balance of convenience is in favour of plaintiffs and in the circumstances, if injunction is not granted, they will suffer irreparable loss.”

21] Learned Advocate Shri Labhe for the original plaintiffs further relied upon the provisions of Sections 72 and 73 of the Maharashtra Land Revenue Code, 1966.

22] Learned Advocate Shri Batwe for the original defendant on the other hand submitted that the original plaintiffs have not specified the boundaries of the suit property in the plaint. According to him, the claim of joint possession of the plaintiffs is not supported by any document. According to

him, as per the revenue map, there is no bifurcation of the original land Survey no.180 and the burden was upon the plaintiffs to specify the suit land on which the plaintiffs are claiming possession. According to him, once specific location of the suit property is not established, the plaintiffs are not at all entitled to claim any relief of injunction. According to him, if the re-grant is made and re-allotment is made then the bifurcation must have been specified by the Collector but no such possession receipt or order has been passed by the Collector and therefore the plaintiffs have failed to establish the specification with boundaries of the suit property. He has submitted that the claim of the defendant on the basis of his sale-deed with respect to the land subject-matter of the counter-claim is subjudice and therefore the defendant is entitled to claim protection of possession of the land subject matter of the counter claim.

23] According to learned Advocate Shri Batwe for the original defendant, the T.I.L.R. map relied upon by the plaintiffs is not as per proper measurement and the demarcation is shown only as per the '*Wahiwat*' shown by the plaintiffs. According to him, no notice of the measurement were given by the Surveyor to the defendant and therefore the map relied upon by the plaintiffs is not valid. Learned Advocate Shri Batwe for the original defendant submitted that the learned trial Judge has recorded a finding that the defendant is in possession of the

land subject matter of the counter claim and as such the learned trial Judge ought to have protected the possession of the defendant but the learned trial Judge has refused the protection of possession of the defendant by wrongly holding that the defendant has no title over the land subject matter of the counter claim.

24] In support of his arguments, learned Advocate Shri Batwe for the original defendant placed his reliance on the judgments in the case of **Gram Panchayat, Kapsi Khurd vs. Steel Merchants Association, Nagpur 2016(1) Mh.L.J. 489** and **Vidyadhar Sitaram Mokal vs. Barkatullah Allhasan Shaikh 2013(4) Mh.L.J. 505.**

As to Point No.1 :-

25] Admittedly land Survey no.180 situated at mouza Murkhala, Tahsil and District : Gadchiroli was owned by Domanpuri s/o Hanuwatpuri as it was granted to him by the Government. Admittedly the said Domanpuri executed sale-deed of land Survey no.180/2 in favour of the plaintiffs by virtue of a registered sale-deed dated 11.4.1983. The copy of the sale-deed of the property show that area admeasuring 81 R out of Gat no.180 was sold to Anusaya and Shantabai (original plaintiffs) by Domanpuri. The copy of the sale-deed would reflect the boundaries of the area admeasuring 81 R sold to the plaintiffs by virtue of the sale-deed. It is also undisputed that by order dated 28.1.1988 passed by the Officer on Special Duty the

revision applications preferred by the plaintiffs was rejected. It is undisputed fact that the original land was granted under Section 149 of the Madhya Pradesh Land Revenue Code 1954. These lands were granted in '*Bhumidhari*' rights i.e. equivalent to Occupancy Class-II. It appears that the original grantee sold the land to the plaintiffs in breach of the condition on which the grant was made to the original land owner. When the Talathi brought this breach to the notice of the Sub Divisional Officer, Gadchiroli on 7.8.1984, Sub Divisional Officer, Gadchiroli passed orders of resuming the land and vesting them in the Government. The plaintiffs and other aggrieved persons carried the matters in appeal to the Resident Deputy Collector, Gadchiroli who dismissed the appeals filed by the appellants.

26] The Sub Divisional Officer, Gadchiroli held that the "*Bhumidhari*" rights which were conferred on the original owners were heritable and transferable, save as otherwise provided by law. Against the order in the appeal, the original plaintiffs and other petitioners approached the Additional Commissioner, Nagpur who concurred with the authorities below him. The plaintiffs and other petitioners preferred revisions before the State Government which were rejected by the competent authority and therefore the plaintiffs and other aggrieved persons approached the Honourable High Court in the Writ Petition No.207/1989. The Writ Petition was disposed of by the Honourable High Court directing the State

Government to consider the applications in accordance with law and having regard to the fact that the petitioners in the Writ Petition appeared to be bonafide purchasers for value of the lands. Upon the observations made by the Honourable High Court, the District Collector, Gadchiroli passed following order :-

संदर्भ :- १. मा. उच्च न्यायालय, मुंबई खंडपीठ, नागपूर यांची रिट पिटीशन क्र.२०७/८९ मधील आदेश दिनांक ३.११.२००३
२. उपविभागीय अधिकारी, गडचिरोली यांचे रामाक्र.१९/एमआरसी ८१/२००३-२००४ मौजा मुखळा मधिल अहवाल दि.६.८.२००४

ज्ञापन

मा. उच्च न्यायालय, मुंबई खंडपीठ, नागपूर हयांचे संदर्भिय रिट पिटीशन मधील निर्देशानुसार तसेच उपविभागीय अधिकारी, गडचिरोली हयांचे अहवालाचे अनुषंगाने मौजा मुखळा येथील स.न.१८०/२ आराजी ०.८१ हे. आर. श्रीमती अनुसयाबाई नरसय्या गणवेणवार व श्रीमती शांताबाई गोपाळराव भांडेकर रा. गडचिरोली ता. गडचिरोली हयांची सरकार जमा झालेली शेतजमीन म.ज.म.नियमावली खंड-२ जनरल सरक्युलर क्रमांक ३ चे परिच्छेद ८० नुसार दुय्यम निबंधक हयांचेकडील सन २००६ व शिघ्र सिध्द गणकानुसार प्रति हेक्टर बाजार मूल्य रु.६३,५००/- गृहीत करून आराजी ०.८१ हे.आर. क्षेत्राचे रुपये ५१,४३५/- भोगाधिकार मुल्य निश्चित करून श्रीमती अनुसयाबाई नरसय्या गणवेणवार व श्रीमती शांताबाई गोपाळराव भांडेकर रा. गडचिरोली हयांना शर्तीचे प्रयोजनार्थ भूमिधारी हक्कारे फेरवाटप करण्याची मंजूरी देण्यात येत आहे.

उपविभागीय अधिकारी हयांनी उपरोक्त रकमेचा भरण संबंधीतांनी केल्यावर त्यांचे नावे फेरवाटपाची सनद म.ज.म. अधिनियम १९६६ मधील अटी व शर्तीचे अधिन राहून प्रदान करावी.

स्वा/-

निरंजनकुमार सुधांशु
जिल्हाधिकारी, गडचिरोली

Principal District
Judge, Gadchiroli

27] The Sub Divisional Officer, Gadchiroli on 28th May 2007 passed consequential orders after the plaintiffs deposited the amount directed in the order of the District Collector dated

13.11.2006. As such, the claim of the plaintiffs is based upon a registered sale-deed executed by the original owner. The transaction has been considered to be of a bonafide purchasers for value of the land by the Honourable High Court. As per the directions of the Honourable High Court in Writ Petition No.207/1989, District Collector, Gadchiroli has passed an order directing redistribution of the land in favour of the plaintiffs subject to deposit of Rs.51,435/-. It appears that the plaintiffs have deposited the said amount and the consequential orders were passed by the Sub Divisional Officer, Gadchiroli giving direction for grant of 'Sanad' in favour of the plaintiffs and directing the revenue authority to take entry in the 7/12 record accordingly. It is thus clear that the plaintiffs have *prima facie* established their title over the suit property.

28] As far as the area subject matter of the sale-deed is concerned, the sale-deed dated 11.4.1983 has been confirmed by the subsequent directions of the revenue authorities to be a legal document of the title. The copy of the sale-deed specifies the boundaries of the 81 R area of the land that was subject matter of the sale-deed. Under such circumstances, the possession of the plaintiffs over area admeasuring 81 R specified by the boundaries mentioned in the sale-deed dated 11.4.1983 have *prima facie* been established.

29] In addition to the same, the plaintiffs also rely upon the map prepared by the office of the Deputy Superintendent of

Land Records, Gadchiroli. Though the defendant has questioned the correctness of the said map on the ground that no notice was issued to the defendant when the map was prepared, such allegation of the defendant questioning the correctness of the map prepared by the competent authority cannot be considered at this juncture and it may be taken into consideration during the trial. It is however clear that in view of Section 83 of the Indian Evidence Act there is a presumption as to maps or plans purporting to be made by the authority of the Government. It is a presumption as to the accurateness of the said map. The sale-deed of the suit property confirms the *prima facie* title and possession of the plaintiffs over the suit property. The boundaries of the area subject matter of the sale-deed has been confirmed by the map of the Superintendent of Taluka Inspector of Land Records Office, Gadchiroli. As such, the plaintiffs have a strong *prima facie* case to seek protection of their possession in case of disturbance at the hands of the defendant or any other person or authority. I therefore find that the plaintiffs have *prima facie* established that they are in possession with title of the suit property and therefore are entitled to seek protection of their possession.

As to Point No.2 :-

30] As far as balance of convenience is concerned, the right and claim of the plaintiffs is upheld by the Honourable High Court in Writ Petition No.207/1989. The order of the

Honourable High Court make a reference to the dispute about the possession of the property. It seems that before the Honourable High Court, the Assistant Government Pleader raised a plea that possession was taken over in the year 1984-85 by the Collector. However such submissions by the Assistant Government Pleader has no consequence in view of the subsequent orders passed by the District Collector permitting a redistribution/regrant of the land to the plaintiffs on depositing of the specific amount and the confirmation as to the '*Sanad*' in favour of the plaintiffs by the order of the Sub Divisional Officer. It is thus clear that the orders passed by the Revenue Authority confirm that it is the plaintiffs who are in possession of the land which is subject matter of the sale-deed dated 11.4.1983 and which is also subject matter of the order passed by the District Collector as well as the Sub Divisional Officer. Under such circumstances, the balance of convenience clearly lies in favour of the plaintiffs since the defendant has no locus standi at all to question the sale-deed in view of the order of the Honourable High Court and the orders passed by the District Collector, Gadchiroli and the Sub Divisional Officer, Gadchiroli. Under such circumstances, balance of convenience clearly tilts in favour of the plaintiffs.

As to Point no.3 :-

31] As far as irreparable loss is concerned, the plaintiffs are seeking protection of their possession after a long standing

battle in which they have succeeded. If the possession of the plaintiffs now is not protected it would be in breach of the spirit of the order passed by the Honourable High Court as well as in breach of the consequential orders passed by the revenue authorities. If the possession of the plaintiffs is not protected despite these facts, the plaintiffs would definitely suffer irreparable loss. It is important that the defendant has no locus standi to claim any stake in the property subject matter of the sale-deed as well as subject matter of the order passed by the revenue authorities. I therefore find that the plaintiffs would suffer irreparable loss in case their possession is not protected.

In view of the above, I answer Points no.1, 2 and 3 in the affirmative.

32] In view of the findings on Points no.1, 2 and 3, I am of the opinion that the plaintiffs are entitled to have an order of injunction in their favour. The act of the defendant in challenging the right of the plaintiffs in the suit property apart from the other obstruction itself is an instance of the obstruction to the right of the plaintiffs over the suit property and it is therefore quite justifiable that the defendant is restrained from obstructing the possession of the plaintiffs over the suit property.

Principal District
Judge, Gadchiroli

As to Point no.4 :-

33] As far as the claim of the defendant is concerned, it is interesting that the defendant has not filed any separate suit

claiming the injunction. The defendant by filing the application (Exh.37) has claimed relief of injunction against the plaintiffs under Order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure. As per the contention of the defendant, he has purchased land admeasuring 81 R out of Survey no.180/1 from the original owner. The claim of the defendant to such an extent would have been matter of a separate suit and appropriate application under Order 39 Rule 1 and 2 of the Code of Civil Procedure filed in such a suit. But in the present case, the relief of injunction has been sought under Rule 1 and 2 of Order 39 of the Code of Civil Procedure by the defendant. There are inherent limitations on the right of a defendant in a suit filed by the plaintiff to claim relief of injunction. It is important to refer to the provisions of Rule 1 of Order 39 of the Code of Civil Procedure :-

ORDER XXXIX
TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS
Temporary injunctions

“1 . Cases in which temporary injunction may be granted —
Where in any suit it is proved by affidavit or otherwise -

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in a execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to [defrauding] his creditors,

(c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,] the Court may be order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property [or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the Court thinks fit, until the disposal of the suit or until further orders.”

34] On plain reading of the provision under Clause (a) would show that in case of danger of being wasted, damaged or alienated or wrongfully sold in execution of a decree, a property may be protected at the instance of either of the party to the suit. However as far as Clause (b) and (c) is concerned, the right to claim injunction as to protection of possession or injury to the right of the plaintiff is the exclusive right of the plaintiff who has filed the suit.

35] In the present case, the defendant has not come out with a case that the *prima facie* subject matter of his claim is being wasted or damaged or alienated by any party to the suit or that it is being wrongfully sold in execution of the decree. Under such circumstances, the defendant is not at all entitled to invoke the provision of Rule 1 of Order 39 of the Code of Civil Procedure by taking refuge to Section 151 of the Code of Civil Procedure.

36] Apart from the above observation, assuming for the sake of argument that the defendant has raised a counter claim in the form of a suit by depositing the appropriate court-fees and therefore the claim of the defendant is in the form of cross-suit, I would consider the merits of the contentions raised by the defendant.

37] The claim of the defendant draws parallel from the claim of the plaintiffs. Defendant claims to be similarly situated with the plaintiffs. According to the defendant part of the land Survey no.180 which was granted to the original owner was sold to the defendant by the original owner. It is clear that as per the history of the property, the land was resumed by the District Collector and thereafter some of the land holders had approached the Honourable High Court and upon the directions of the Honourable High Court, the District Collector had passed order of redistribution/regrant of the lands to the bonafide purchasers. The defendant has not brought on record any document to show that he has raised any such claim and that after accepting his claim, the District Collector had regranted or redistributed the land to the defendant and that he had deposited any amount with the District Collector upon which the Sub Divisional Officer had passed any order as to grant of '*Sanad*' or taking entry in the revenue record in the name of the defendant.

38] In absence of this record, it cannot be said that the defendant have proved *prima facie* title over the suit property. Unless the title of the defendant by producing the copy of the sale-deed and subsequent regrant in the name of the defendant has been established on record by the defendant, the Court cannot presume that the defendant has a *prima facie* case to protect possession. Under such circumstances, in absence of any valid title and any valid order from the competent revenue authority, the defendant can neither claim title nor protection of possession in any portion of the land Survey no.180. Under such circumstances, I do find that the defendant has failed to prove prima facie case for grant of relief in his favour.

As to Point no.5 :-

39] As far as balance of convenience is concerned, once the land has been resumed by the District Collector the land vest in the District Collector and it is presumed that it is the Collector who is in possession of the property. Under such circumstances, unless the property subject matter of the counter claim is regranted by the valid order of the Collector it cannot be said that the defendant is entitled to have any right therein. In this sense, the balance of convenience would not lie in favour of the defendant.

Principal District
Judge, Gadchiroli

As to Point no.6 :-

40] Though the defendant claims that the defendant is perusing his right regarding the property subject matter of the

counter claim, it has not been established till date that the defendant has succeeded in claiming re-grant of the property or establishing possession over the suit property. Under such circumstances, the defendant has failed to show that he would suffer irreparable injury if relief of injunction is not granted in his favour.

In view of the above, I answer Points no.4, 5 and 6 in the negative.

As to Point no.7 :-

41] The above discussion would make it clear that though the learned Jt. Civil Judge (Junior Division), Gadchiroli was right in denying the claim of the defendant, the claim of the plaintiffs ought to have been allowed by the learned trial Judge. I therefore find that the common order passed by the learned trial Judge below the application (Exh.5 and Exh.37) needs to be modified accordingly.

In view of the above discussion, I proceed to pass following order.

O R D E R

- 1] Misc. Civil Appeal No.29/2022 filed by the original plaintiffs Smt. Anusaya Narsayya Ganwenwar and Smt. Shantabai Gopalrao Bhandekar is hereby allowed. The impugned order passed below Exh.5 in Regular Civil Suit No.75/2022 passed on 6.10.2022 by the learned Jt. Civil

Judge (Junior Division), Gadchiroli is hereby reversed and set-aside.

- 2] The defendant in Regular Civil Suit No.75/2022 is hereby restrained from obstructing the possession of the plaintiffs over the suit property till final decision of the suit.
- 3] The order regarding rejection of the application (Exh.37) filed by the original defendant Umesh Vasantrao Poreddiwar in Regular Civil Suit No.75/2022 passed on 6.10.2022 by the learned Jt. Civil Judge (Junior Division), Gadchiroli is hereby confirmed and consequently the Misc. Civil Appeal No.28/2022 filed by the original defendant in Regular Civil Suit no.75/2022 is hereby dismissed.
- 4] Parties to bear their own costs.
- 5] Inform the trial Court accordingly.
- 6] The judgment is dictated and pronounced in open Court.

Gadchiroli
Date: 09.08.2023

(U. B. Shukla)
Principal District Judge,
Gadchiroli