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Duration : 06 Y. 09M. 28D.

Exh 21

**IN THE DISTRICT COURT SINDHUDURG
AT: OROS**

TAL. : KUDAL, DIST. : SINDHUDURG

(Presided over by Dr Sudhiir M Deshpande, Principal
District Judge, Sindhudurg)

REGULAR CIVIL APPEAL NO.75 OF 2019
(CNR MHSl010006592019)

1. Giridhar Krushna Keluskar
Age: 63 yrs., Occu.: Retired
R/o Medha-Malvan
Tal. Malvan, Dist. Sindhudurg
At present R/o A/4, Madhav
Bhuvan,
First Floor, Dr. Ambedkar Road,
Parel, Mumbai 400 012

Appellants
(Original
Plaintiffs No. 1
and 2)

2. Kastura Krushna Keluskar
Age: 66 yrs., Occu.: Retired
R/o Medha-Malvan
Tal. Malvan, Dist. Sindhudurg

Versus

1. Harish Ganesh Keluskar
Age: 61 yrs., Occu.: Retired
R/o Medha-Malvan
Tal. Malvan, Dist. Sindhudurg
2. Rajendra Ganesh Keluskar
Age: 47 yrs., Occu.: Tax Consultant
R/o Medha-Malvan
Tal. Malvan, Dist. Sindhudurg

Respondents
(Original
Defendants No.
1 to 4)

3. Laxman Ganesh Keluskar
Age: 60 yrs., Occu.: Businessman
R/o House No. 1384, Kelbaivadi-
Kudal
Tal. Kudal, Dist. Sindhudurg
4. Ambika Ganesh Keluskar
(Since deceased her legal heirs
Respondents No. 1, 2 and 3.)

Appearance:

Mr R K Parulekar, Ld advocate for the appellants
Respondents: In person

J U D G M E N T

(Declared on: 04th day of April 2026)

This appeal is directed against the judgment and decree dated 10/05/2019 passed by the learned Civil Judge (J.D.), Malvan in Regular Civil Suit No. 66 of 2011, whereby the suit filed by the present appellants (original plaintiffs) for perpetual injunction and compensation came to be dismissed with costs.

2] For the sake of convenience, wherever the context so requires, the parties are referred to by their original positions and nomenclature as in the suit before the trial court.

3] The properties are as follows.

The properties are situated at village Malvan, Tal. Malvan, District Sindhudurg.

Sr. No.	Survey No.	Hissa No.	Admeasuring (Hectare Are)
1	1236 (927A)	3/2	0-01-0

4] This is the “suit property” and the House No. 17 which is old House No. 10 in 1951-52 standing in this suit property admeasuring 9.80x9.10 sq. mtr..

5] The plaintiffs have filed the suit contending that they are the lawful occupants and tenants of the suit property, including House No. 17(10) situated on the suit land, and that their forefathers were in possession thereof since prior to 1956–57. They have pleaded that the suit property is ancestral in nature and that their names are recorded in the revenue as well as municipal records. It is their case that they had obtained necessary permission and commenced construction on the suit property. However, on 02.06.2011, the defendants illegally interfered with their possession and demolished part of the construction by using a JCB, thereby causing loss and damage. The plaintiffs further contend that the defendants have no right, title or interest in the suit property and are threatening to interfere with their possession. Hence, the suit is filed seeking perpetual injunction to restrain the defendants from interfering with their possession and for compensation for the loss caused.

6] The defendants have filed their Written Statement at Exh. 19 denying the plaintiffs' case in toto. They have disputed the plaintiffs' claim of ownership, tenancy, and possession over the suit property and contended that the plaintiffs have no exclusive right, title, or interest therein. The defendants have further denied that the suit property is ancestral as alleged and have put forth their own claim over the property. They have specifically denied the allegations of illegal interference and demolition of construction on 02.06.2011, and contended that the suit is false and filed to harass them. It is also their contention that the suit for mere injunction and compensation is not maintainable without seeking declaration of title in view of the disputed ownership. On these grounds, they have prayed for dismissal of the suit with costs.

7] Based on the rival pleadings, the trial court framed following issues and gave findings.

अ.क्र.	मुद्दे	निष्कर्ष
१	यातील वादी हे शाबीत करतात .. का की, दावा मिळकतीत त्यांचा कायदेशीर कब्जा आहे?	होय.
२	यातील वादी हे शाबीत करतात .. का की, यातील प्रतिवादी यांनी त्यांच्या कब्जेवहिवाटीस हरकत, अडथळा केलेला आहे?	नाही.

- ३ यातील वादी हे त्यांच्या .. नाही.
मागणीप्रमाणे निरंतर ताकिदीची
दाद मिळवणेस पात्र आहेत
काय?
- ४ यातील वादी हे नुकसानीदाखल .. नाही.
रक्कम रु. २०,०००/- वसूल
होवून मिळवणेस पात्र आहेत
काय?
- ५ कोणता आदेश व हुकुमनामा? .. दावा खर्चासह
नामंजूर करण्यात
येतो.

8] The learned Trial Court, by the impugned judgment and decree, dismissed the suit filed by the plaintiffs for perpetual injunction and compensation with costs.

9] Heard learned advocate for the appellants. None appeared for the respondents.

10] Mr. R. K. Parulekar, learned advocate for the appellant (original plaintiffs), submits that the learned Trial Court has erroneously dismissed the suit, which was filed for perpetual injunction and compensation. He submits that Exhibit 6 (7/12 extract) reflects the names of the plaintiffs as tenants and establishes that their forefathers were tenants of the suit land since prior to 1956-57. Further, Exhibit 8 (Form No. 43 – assessment extract) stands in the names of Giridhar and Kasturi, i.e., Plaintiff Nos. 1 and 2. The suit property consists of a house

situated on 1 guntha of land, being House No. 17(10), which is the subject matter of the suit.

11] It is further submitted that Exhibit 33 shows the entry of the plaintiffs' names in the Nagar Palika records in the year 2010, and Exhibit 34 is the commencement certificate. The plaintiffs had commenced construction and erected pillars up to June 2011. However, on 02.06.2011, Defendant Nos. 1 to 3 demolished the said pillars. They were prosecuted and convicted by the Malvan Court for the said offence, and the judgment is produced at Exhibit 38.

12] Learned advocate submits that, thereafter, the plaintiffs completed construction of the house; however, they have a reasonable apprehension that the defendants may again demolish it. He relies on oral evidence, namely Exhibit 26 (plaintiffs' evidence), Exhibit 40 (evidence of Raman Wairkar), and Exhibit 57 (evidence of Vasant Temkar). Raman Wairkar and Vasant Temkar are witnesses to the damage caused by the demolition.

13] It is further submitted that though a valuation report dated 14.06.2011 assessing damage at ₹20,000 was produced, the valuer was not examined, and therefore the said report could not be duly proved.

14] Mr Parulekar finally submits that, despite recording a finding that the plaintiffs were in possession, the Trial Court failed to grant injunction, even though the defendants had demolished the construction using a JCB. Hence, it is prayed that the appeal be allowed and the suit be decreed with costs.

15] After hearing the learned advocate for appellant-plaintiff, and perusing the record of proceedings, including the evidence and the trial court's judgment, as well as examining the contents of the appeal memo and the authorities cited by the parties, the following key points emerge for consideration. My findings on each of these points, along with the detailed reasons, are set out in the subsequent part of this judgment.

Sr. No.	Points	Findings
1.	Whether the plaintiffs prove that they were in lawful possession of the suit property and that the defendants illegally interfered with or demolished the construction?	Yes.
2.	Whether the plaintiffs are entitled to perpetual injunction and compensation as claimed?	Partly yes.
3.	Whether the defendants prove that the suit is not maintainable for want of declaration of title or that they have a better right to the suit property?	No.
4.	Whether the impugned judgment and decree passed by the Trial	Yes.

Court is erroneous, illegal, or
perverse and requires interference?

5. What Order?

Appeal
allowed.

R E A S O N S

As to Point No. 1

Whether the plaintiffs prove that they were in lawful possession of the suit property and that the defendants illegally interfered with or demolished the construction?

16] The documentary evidence at Exh. 6 (7/12 extract), Exh. 8 (Form 43 assessment extract), and Exh. 33 (municipal entry) consistently show their names and support their status as occupants/tenants. Exh. 34 (commencement certificate) further indicates that they had undertaken construction on the suit land. The oral evidence of the plaintiff at Exh. 26, corroborated by PW-2 Raman Wairkar (Exh. 40) and PW-4 Vasant Temkar (Exh. 57), establishes that the plaintiffs had erected construction up to June 2011. The specific incident of demolition on 02.06.2011 by Defendant Nos. 1 to 3 is supported by Exh. 38, the criminal court judgment recording their conviction, which lends strong corroboration to the plaintiffs' case of interference. The cross-examination does not discredit the plaintiffs' possession or the incident of demolition, and the defendants have failed to produce cogent evidence to establish their own possession or justify the interference.

In law, settled possession is sufficient to seek protection against unlawful interference. Accordingly, it is held that the plaintiffs have proved that they were in lawful possession of the suit property and that the defendants illegally interfered with and demolished part of the construction. Hence, I answer point No. 1 in the affirmative.

As to Point No. 2

Whether the plaintiffs are entitled to perpetual injunction and compensation as claimed?

17] The plaintiffs have established their lawful and settled possession over the suit property through documentary evidence at Exh. 6, Exh. 8, Exh. 33 and Exh. 34, as well as oral evidence at Exh. 26, Exh. 40 and Exh. 57. They have further proved that the defendants interfered with such possession and demolished part of the construction on 02.06.2011, which is corroborated by Exh. 38, the criminal court judgment. The cross-examination does not discredit their case, and the defendants have failed to establish any better right or lawful justification for their acts. In law, settled possession is sufficient to grant protection by way of injunction. Accordingly, the plaintiffs are entitled to a decree of perpetual injunction restraining the defendants from interfering with their possession.

18] However, though the act of demolition is proved, the plaintiffs have failed to establish the exact quantum of damages, as the valuation report has not been duly proved for want of examination of the valuer. Hence, the claim for compensation cannot be granted as prayed. Accordingly, I answer point No. 2 partly in the affirmative.

As to Point No. 3

Whether the defendants prove that the suit is not maintainable for want of declaration of title or that they have a better right to the suit property?

19] The defendants have contended that the suit for injunction and compensation is not maintainable in the absence of a declaration of title and have denied the plaintiffs' right, title and possession over the suit property while asserting their own claim. However, the burden to establish such plea lies on the defendants. The evidence on record shows that the defendants have not produced any cogent documentary material to substantiate their alleged title or possession. The cross-examination of the plaintiffs does not elicit any admission discrediting their possession, nor does it establish possession of the defendants. On the contrary, the plaintiffs' documentary evidence at Exh. 6, Exh. 8 and Exh. 33 remains unshaken. In law, a suit for injunction simpliciter is maintainable where the plaintiff proves possession and seeks protection against interference, and a declaration is not necessary unless title

is seriously clouded and possession is not established. In the present case, the plaintiffs have proved their possession, and even the Trial Court has observed the same. When plaintiff is in settled possession, injunction simpliciter is maintainable even if title is disputed. Here, The defendants have failed to prove any better right or possession over the suit property. Hence, their contention regarding non-maintainability and better right cannot be accepted. Accordingly, I answer point No. 3 in the negative.

As to Point No. 4

Whether the impugned judgment and decree passed by the Trial Court is erroneous, illegal, or perverse and requires interference?

20] In the present case, this being a first appeal under Section 96 of the Code of Civil Procedure, this Court is empowered to re-appreciate the entire evidence on record. Upon such re-appreciation, it is evident that the learned Trial Court has dismissed the suit despite recording a finding that the plaintiffs were in possession of the suit property. Such a finding, coupled with refusal to grant injunction, is self-contradictory and renders the judgment perverse. The Trial Court has failed to properly appreciate the documentary evidence at Exh. 6, Exh. 8, Exh. 33 and Exh. 34, which clearly establish the plaintiffs'

possession and construction activity. Further, it has not given due weight to Exh. 38, the criminal court judgment convicting the defendants for demolition, which is a material piece of evidence corroborating interference. Though not conclusive, it lends corroborative value. The oral evidence of the plaintiffs and their witnesses at Exh. 26, Exh. 40 and Exh. 57 has also not been properly evaluated, nor are there cogent reasons assigned for discarding the same. The cross-examination does not bring out any material contradictions to disbelieve the plaintiffs' case. The Trial Court has also failed to apply the settled principle of law that possession alone is sufficient to grant injunction against unlawful interference and has not properly considered whether the defendants proved any better right or the plea of non-maintainability. Thus, the findings recorded are contrary to the evidence on record and suffer from misappreciation of evidence and incorrect application of law. Hence, the impugned judgment and decree are erroneous, illegal and perverse, and the same require interference and deserve to be set aside. Hence, I answer point No. 4 in the affirmative.

**As to Point No. 5
What Order?**

21] In view of the findings recorded on the above points, the appeal deserves to be allowed. The impugned judgment and decree passed by the Trial Court are liable to be set aside. Consequently, the suit filed by the plaintiffs

for perpetual injunction deserves to be decreed, restraining the defendants from interfering with the plaintiffs' possession of the suit property. However, the claim for compensation deserves to be rejected for want of proof of quantum of damages. Accordingly, the appeal deserves to be allowed partly, and the suit partly decreed (allowed to the extent of injunction, rejected for compensation) with costs.

O R D E R

1. The Appeal is allowed partly.
2. The judgment and decree dated 10/05/2019 passed by the learned Civil Judge (J.D.), Malvan in Regular Civil Suit No. 66 of 2011 are hereby set aside.
3. Regular Civil Suit No. 66 of 2011 is partly decreed as under:
The defendants, their agents, servants or any person claiming through them are permanently restrained from interfering with the peaceful possession of the plaintiffs over the suit property, including House No. 17(10).
4. The claim of the plaintiffs for compensation is rejected for want of proof of quantum of damages.
5. The parties shall bear their own costs throughout.
6. Decree be drawn accordingly.

Sd/-
(Dr Sudhiir M Deshpande)
Principal District Judge,
Sindhudurg at Oros.

All concerned to act upon the digitally signed uploaded copy of this order, the printout of which can be verified from the official website of this court. In this regard, attention of all concerned is invited to the authority of the Hon'ble High Court of Bombay (Bench at Aurangabad) ***Shital Krushna Dhake v. Krushna Dhake***, MANU/MH0285/2018.

Certificate

“I affirm that the contents of this P.D.F. file Judgment / Order are the same word-for-word as per the original Judgment / Order.”

Name of the affirming Steno : Mr S D Parulekar
English Grade I Stenographer

Name of the Court : Principal District Judge, Sindhudurg
at Oros
(Dr Sudhiir M Deshpande)

Date of pronouncement : 04-04-2026

Signed by the Presiding Officer : 04-04-2026
on

Uploaded on : 04-04-2026