

MHYA010025032022



Presented on : 29/09/2022
Registered on. : 13/10/2022
Decided on : 10/11/2025
Duration- : 03-Y, 00-M, 27-D

IN THE COURT OF DISTRICT JUDGE-2, YAVATMAL.

(Presided over by S.R. Sharma)

MISCELLANEOUS CIVIL APPEAL NO.31/2022

Exh.No.

APPELLANTS

(ORIGINAL DEFENDANTS)

- 1) Amol Gulab Wadekar
Aged about 20 years,
Occupation : Agriculturist
- 2) Sau. Manda Gulab Wadekar
Aged about 45 years,
Occupation : Household
- 3) Sau. Madhuri Amol Wadekar
Aged about 19 years,
Occupation : Household

All R/o. Chondhi, Tq. Babhulgaon,
Dist. Yavatmal.

- V E R S U S -

RESPONDENT

(ORIGINAL PLAINTIFF)

Deepak Narayanrao Gajbhiye
Aged about 55 years,
Occupation : Agriculture & Business,
R/o. Ashok Nagar, Patipura, Yavatmal,
Tq., Dist. Yavatmal.

Advocate K. S. Jaiswal for Appellants.

Advocate M.R. Raut for respondent.

JUDGMENT

(Delivered on this 10th November, 2025)

This is an appeal under Order XLIII Rule 1 of the Code of Civil Procedure challenging the order passed below Exh.5 in Regular Civil Suit No.28/22 by the Court of Civil Judge Junior Division, Babhulgaon dated 13/09/2022. The parties are being referred to by their original nomenclature for the sake of mileage.

2. The pleading of plaintiff is that he has purchased field bearing Gat No.30/2, area 01H:62R class 1 having boundaries as specified in para 3 of plaint (hereinafter referred as the suit property) from the erstwhile owners by way of registered sale-deed No.275/67-29/2022 on 10/03/2022. Since then he is the owner and possessor of the suit property. The respondents who have criminal antecedent used to work as labour for the erstwhile owner of the suit property. Without having any right or authority over the suit property they have been preventing peaceful utilization of suit property by him. On 17/02/2022 they were issued notice through advocate. However in spite of receipt of notice the respondents did not reply nor comply the same. They continued with the obstruction which constrained him to lodge report with Police Station Babhulgaon. Vide registered sale-deed erstwhile owners had handed over the possession of suit property to him. In pursuance of the same his name has also been entered in the Revenue Record. However in view of continuous obstruction on part of the respondents he has filed suit for permanent injunction before trial court.

3. The pleading of the defendants is that their grandfather – Laxman Indrajai Kolam had purchased the suit property from the erstwhile

owner – Bapurao Ramchandra Bedarkar whereafter it was in his ownership, possession which has now passed on to them being his legal heirs. It is detailed that east west portion on northern side admeasuring 8 acres within field survey No.20/4 at Chondi, Tq. Babhulgaon, Distt. Yavatmal was to be sold to their grandfather by erstwhile owner Bapurao Ranchandra Bedarkar on 2.4.64. He instead did sale only of 4 acres. Nevertheless consideration for entire 8 acres i.e Rs.800/- was taken. Also possession of whole 8 acres was transferred to their grandfather. Since their relations were cordial Bapurao Bedarkar never executed sale for the remaining 4 acres (i.e suit property)during his life time. However, he also his legal heirs were aware of this fact whereby no suit was instituted by them till now. Their grandfather had even got his name entered in revenue record of the suit property. But legal heirs of erstwhile owner - Bapurao Bedarkar after his demise, in spite of being aware of above transaction, fraudulently executed sale-deed of suit property in favour of the plaintiff. Since then he has attempted to dispossess them forcibly from the suit property.

4. In the injunction suit the application of plaintiff for temporary injunction below Exh.5 has come to be allowed by the trial court. The defendants have been temporarily refrained from obstructing in his peaceful possession of the suit property. Being dissatisfied by the order the defendants have preferred this appeal.

5. Heard the counsel of both the sides. Perused the paper book and the order passed by trial court. Both sides have also taken liberty to file documents. The points for determination along-with my findings thereon are as follows:

	<u>P O I N T S</u>	<u>F I N D I N G S</u>
1)	Whether the order passed by the Trial Court is proper?	Yes
2)	What order?	The appeal is dismissed.

R E A S O N S

As To Point Nos.1 & 2:

6. The defendant advocate strongly urged that it is essential that the suit is decided on merits by the trial court. He amplified that it is only then that the point of possession, title can be actually ascertained. He explained that after trial if the possession is proved to be that of the plaintiffs they can seek *means profit* which makes it evident that the point of irreparable loss does not exist in their favour. He exhorted that *per contra* if the possession of the defendants of 50 years is not provided protection they would not only suffer loss but their claim would be infructuous. He asserted even Honourable High Court had considered the point of their long standing possession. He expressed that plaintiff would suffer no hardship whereas for them it would amount to dead end. On the strength of above submissions, he contended that it is a fit case where the appeal should be allowed and the impugned order set aside.

7. Advocate appearing for the plaintiff replied that he had got *ferfar* entry done of the suit property on basis of his sale deed which entry had been appealed against by the defendants and got dismissed whereby this amounts to abuse of process of law. He amplified that against obstruction done by the defendants he not only gave report to police station but even served them with legal notice which illumines that

he has undertaken recourse of law. He maintained that as per the defendant themselves only sale deed of 4 acres had been done as against 8 acres. He pleaded that their sale deed, right of vendor have remained unchallenged. He concluded that with finding of *prima facie case* arrived at in the impugned order they were entitled for protection. In support of his submissions he placed reliance on

- i) ***Lakshmi @ Bhagyalakshmi and another vs E.Jayaram (dead) by LR [2014(1) Civil LJ 786] Supreme Court***

8. Coming to the merits of appeal, although, defendant advocate argued extensively concerning various points said to arise out of the order of the trial court, I am of the view that since both sides are claiming “title and consequent possession” over the suit property that alone is the pivotal point to be cogitated by this Court. If the answer to the question is in favour of the defendants-appellants they are entitled to succeed. Otherwise, the appeal is liable to be dismissed on merits.

9. On the point of title, it is the argument of learned defendant Counsel that the trial court below committed error in holding that defendants were not vested of title and possession to the suit property albeit those were vested in their favour right from the time mutation was effected. According to him, *ferfar* by the plaintiff will not extinguish their title nor has it any presumptive value on title. Therefore, according to him the defendants consequently continue to be in possession and enjoyment of the suit property. On the basis of these arguments, learned counsel submitted that the appeal is to be allowed in full. The learned plaintiff counsel counterpoised that the trial court below was right in granting injunction since their acquisition to title of suit property was based on

registered sale deed.

10. In the instant suit the plaintiff is claiming title to suit property through registered sale deed (Pg 50 to 69 of P.B) executed by present title holders- valid vendors followed by pursuant entries in 7/12 extract, 8-A extract , Form -6 mutation extract (Pg 44 to 46 of P.B). On the other hand defendants have set up title to the suit property on the basis of sale deed (Pg 106 to 110 of P.B/ Dcmnt no.27- List Exh.14) executed by predecessor-in-title and pere patrak (Pg 85 to 105 of P.B/ Dcmnt no.4- List Exh.14). Defendant side contends that there is noting of their sale agreement in 7/12 extract (Pg 79 of P.B/ Dcmnt no.1- List Exh.14).

11. If both the sale deeds referred to above are scrutinized it is made perspicuous that sale deed (Pg 50 to 69 of P.B) tendered by the plaintiff contains explicit averment in regard to suit property which is described therein. It is a registered document. Registered document carries with it presumption that it was validly executed. It is for the party challenging the transaction to show that the transaction was not valid in law. Albeit the defendants are claiming title to entire 8 acres of land (inclusive of the suit property) their sale deed (Pg 106 to 110 of P.B/ Dcmnt no.27- List Exh.14) pertains to only 4 acres of land excluding the suit property. The defendant have retorted that consideration of entire 8 acres was paid and it was due to close relations that predecessor in title did not execute sale deed of the suit property during his life time (W.S Pg 24 of P.B). Even if this is assumed for the sake of argument they offer no explanation that if the relation were so close that no need to execute a formal document was felt why sale deed (Pg 106 to 110 of P.B/ Dcmnt no.27- List Exh.14) was executed for even the concerned 4 acres. Also

there is no material which vivifies their having asked for execution of same during his life time.

12. In addition to above, defendants claim right over suit property on the basis of possession of entire 8 acres (inclusive of suit property) invigorated by mutation entries. It is settled position of law that mutation entries do not confer any ownership right, legal title or interest on the person in whose favour they are made. The mutation entry in the revenue record is only for fiscal purpose, that is, to realize tax from the person whose name is recorded in the revenue records. No rights can be crystallized on their basis. That being the position *pere patrak* (Pg 85 to 105 of P.B/ Dcmnt no.4- List Exh.14), 7/12 extract (Pg 79 of P.B/ Dcmnt no.1- List Exh.14) cannot be construed as conveying right in favour of defendants or extinguishing that of the plaintiff whose Mutation (Pg 44 to 46 of P.B) is carried out on the basis of acquisition of title through registered sale deed (Pg 50 to 69 of P.B). With the plaintiff having *prima facie* established his claim to title he cannot be non-suited; mutation entries of the defendants cannot override it. Defendants claim lacks "vestige of a right or title". In fact the trial Court has even in its impugned order (Pg 13 to 23 of P.B) elucidated how the documents filed by the defendants and details of property therein fail to make pellucid any connection of them with the suit property in question.

13. The defendant advocate had even invited the attention of this court to report (Dcmnt.No 31/list exhibit 14) to affirm that actual physical possession was with the defendants. He added that 7/12 extract entry carried out by the plaintiff has been challenged by them. However, on the previous occasion when this appeal was taken up for hearing in

regard to stay application (Exh.5) these contest were already dealt with by this Court and answered in negative for the reasons given therein. Hence they do not survive. Further, elaboration on these points is thus uncalled for to avert pleonasm.

14. In view of the discussion laid ante it is evident that the learned trial Court while passing the impugned order has followed established legal procedures, and appreciated the material on record correctly to arrive at the finding of there to exist prima facie case in favour of the plaintiff. Considering the material on record the contention of the defendants that no hardship would be caused to the plaintiff is contrary to the documents. Under these circumstances I find myself unable to accept submission of defendant side that the only irreparable loss which can be caused is to them. The plaintiff has made out a case for discretionary relief of temporary injunction in his favour.

15. The observations of the learned trial Court are convincing. Impugned order is justified. This Court agrees with the assessment of evidence made by the trial Court In opinion of this Court this is certainly not an appeal in which any interference is called for. As a result of aforesaid discussion, the appeal fails and deserves to be dismissed.

16. Before saying omega it is clarified that the trial court shall proceed with the suit and bring the proceedings to its logical conclusion in accordance with law. It is made clear that any observation made by this Court shall not be taken as an opinion on the merit of the issues which may arise for consideration in the course of the suit proceedings. It is clarified that this Court has addressed those issues only with a view to find out whether it was a fit case for grant of temporary injunction.

Consequently, the order passed by the learned trial court is confirmed. Ergo, I answer point No.1 in affirmative and in answer to point No.2, I ordain as follows.

ORDER

- (1) The Appeal is dismissed.
- (2) Order passed below Exh.5 in Regular Civil Suit No.28/22 by the Court of Civil Judge Junior Division, Babhulgaon dated 13/09/2022 is confirmed.
- (3) Inform the Trial Court accordingly.

Date : 10/11/2025

(S. R. Sharma)
District Judge 2, Yavatmal.