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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.207 OF 2026
WITH
CIVIL APPLICATION NO.28 OF 2026
IN
WRIT PETITION NO.207 OF 2026

GUNAWANTI PANDU GAUDE AND 7 ORS. ... Petitioners.

Versus

RAJESH SAWALO ALIAS SANVOL ALIAS SAVLO ALIAS SAULO JALMI. ... Respondent.

Mr S. M. Singbal, Advocate for the Petitioners.
Mr Tarun Rebello and Mr Kabir Sabnis, Advocates for the Respondent.

CORAM: **S. G. CHAPALGAONKAR, J.**
RESERVED ON: **14th October, 2026**
PRONOUNCED ON: **19th October, 2026**

ORDER:

1. Petitioner impugns order dated 25.11.2025 passed by District Judge-3, Merces, sitting at Ponda Goa, in Miscellaneous Civil Appeal No. 43/2023, whereby order of temporary and mandatory injunction has been clamped against Petitioner. While setting aside order dated 24.04.2023, passed by Civil

Judge, Junior Division, 'D' Court, Ponda, rejecting Respondents application filed below Exhibit 3. Parties shall hereinafter be referred as per their original status in the suit.

2. Petitioners herein are Original Defendants. Respondent-Plaintiff instituted Regular Civil Suit No. 36/2021 seeking relief of permanent and mandatory injunction against Defendants contending that he is in possession of land bearing Survey No. 187/3 admeasuring 675 sq. mts. His father Sawalo alias Sanvol alias Savlo alias Saulo was tenant of suit property. His name was mutated in Record of Rights in Tenants column. His father used to cultivate the land with help of Plaintiff. On 21.11.1974, Plaintiff's father expired and Plaintiff continued exclusive possession and enjoyment of suit property. However, Defendant No.6 made unsuccessful attempt to interfere in suit property by destroying crops of Plaintiff. On 18.09.2017, complaint was made to Village Panchayat against him. On intervention of Sarpanch, Defendant No.6 tendered apology and promised not to interfere in suit property. However, during Covid period, Defendants uprooted wooden fencing made by Plaintiff and affixed four cement poles towards western side. Plaintiff realised said fact in month of May, 2021 and requested Defendant to remove the same. Thereafter, Defendant illegally erected shed towards western side of suit property. Plaintiff took photographs of site on 04.07.2021 at time of his visit and

filed complaint dated 05.07.2021 with Ponda Police Station and filed present suit against Defendants along with application for temporary mandatory injunction for removal of encroachment and temporary injunction from interfering in Plaintiff's possession.

3. Defendants contested Plaintiff's claim contending that they are tenants of suit field, however, name of Plaintiff's father and Plaintiff is wrongly recorded in Tenants column. They have made old construction which is fenced by cement poles on 24.04.2023. Trial Court, after considering rival submissions, rejected Plaintiff's application for temporary injunction filed at Exhibit D-3 observing that as per Plaintiff's own case, obstruction started in year 2017 but he failed to take immediate steps. Further, there are no specific pleadings regarding encroachment supported by material whereby extent and level of construction or area of encroachment can be gathered.

4. Aggrieved, Plaintiff filed Misc. Civil Appeal No. 43/2023 Before District Judge at Merces, which came to be allowed directing Defendants to demolish suit shed and remove cement poles with barbed wire fencing, and further Defendants are restrained from interfering in possession of Plaintiff over suit property.

5. Mr S. M. Singbal, learned Advocate appearing for

Applicant/Petitioner, would submit that suit of Plaintiff would not be maintainable before Civil Court. Further, Civil Court has no jurisdiction to grant relief of injunction in facts of case. He points out that Plaintiff claims tenancy rights over suit property. Issue as to tenancy is framed by Trial Court. If Plaintiff wants to contend that he has been illegally dispossessed from tenanted property, he will have to seek injunction before Mamlatdar in light of provisions of Goa, Daman and Diu Agricultural Tenancy Act, 1964. He would further submit that Appellate Court granted extraordinary relief of temporary mandatory injunction without there being supporting pleading and material. He would submit that District Court exceeded jurisdiction while reversing well-reasoned order of Trial Court. In support of his contentions, he relies upon observation of Supreme Court in case of ***Inacio Martins vs. Narayan Hari Naik and Ors.***[1], observations of this Court in case of ***Shri Rajaram Rau Patil vs. Shri Marcel de Piedade Braganza & ors.***[2], and ***Shri Manhohar Jaiwant Satardekar vs. Shri Joitkumar B. Jain***[3].

6. Per contra, Mr Tarun Rebello, learned Advocate appearing for Plaintiff-Respondent, supports impugned order. According to him, suit is filed for perpetual and mandatory injunction

[1] (1993) 3 SCC 123

[2] (1998) 4 Bom CR 203

[3] F.A. No.21/2015 dated 09.11.2023

based on possession. Petitioner is not seeking declaration of his tenancy rights, but merely seeks protection of his possession which is apparent from mutation record having presumptive value.

7. In support of his contention, he relies upon observations of this Court in case of ***Balkrishna Puno Naik and Ors. vs. The Communidade of Kundaim***[4], and ***Palmira Valadares vs. Inacio Mariano Dias and Ors.***[5].

8. After hearing learned Advocates appearing for respective parties and on perusal of reasoning adopted by learned District Judge in impugned order, it can be observed that Plaintiff claims his possession over suit property, i.e. land bearing Survey No. 187/3 admeasuring 675 sq. mts. in capacity of tenant. He relies upon entry in Record of Rights whereby name of his father was appearing in Tenants column. After death of Plaintiff's father, his name continued to appear. Undisputedly, aforesaid mutation record is never questioned by Defendants. Although Defendants claim themselves to be tenants of Survey No. 187/2 as well as 187/3, they could not bring any evidence in support of such contention. Learned District Judge has observed that Defendants raised construction in land Survey

[4] MANU/MH/1852/2009

[5] (1998) 4 BomCR 526

No.187/3 without any authority or construction licence from Panchayat.

9. *Prima facie*, evidence on record is sufficient to show Plaintiffs' possession over suit property. Defendants admit that they have made construction in Survey No.187/3, however, could not establish their right to do so. In this backdrop, Appellate Court is justified in restraining Defendants from interfering in possession of Plaintiff. Merely because Defendants could raise construction of shed in suit land during Covid situation, they cannot claim their settled possession over suit property.

10. Insofar as relief of temporary mandatory injunction is concerned, it is well settled that it can be granted only for purpose of maintaining status quo prevailing on date of institution of suit or immediately preceding thereto. There must be impeccable material on record to depict that on the date of institution of suit or immediately preceding thereto, Defendants have disturbed scenario of suit property either by raising construction or disturbing nature of property.

11. In present case, except Plaintiff's pleadings, no other evidence is brought on record to show as to when Defendants have raised construction. Even sufficient particulars of such construction are not brought on record. Plaintiff has not filed

affidavit of adjoining land holders or any officer from Panchayat with whom he had made complaints regarding illegal activities of Defendant over suit field. *Prima facie*, this Court finds that ingredients for grant of extraordinary relief of temporary mandatory injunction as stipulated by Supreme Court in case of ***Dorab Cawasji Warden vs. Coomi Sorab Warden & Ors.***[6], are not made out. Therefore, impugned order to the extent it directs demolition of suit shed and removal of cement poles with barbed wire fencing cannot be sustained in law.

12. Insofar as contention of Defendant that suit itself is not maintainable in light of provisions of Tenancy Act, this Court finds that Plaintiff claims his possession over suit property being tenant. Defendant also claims to be tenant. Plaintiff has supported his claim on the basis of his mutation record having presumption under law. Looking to prayers in suit, Plaintiff is seeking to protect his possession and removal of unauthorised construction raised by Defendants. This is not a case where Plaintiff is seeking declaration of his tenancy rights as against land owner or anyone claiming through him. Plaintiff is trying to defend his interest against person raising adverse claim of tenancy. In this backdrop, Civil Court is only competent to decide and rule upon issue of possession between parties.

[6] AIR 1990 SC 867

13. In case of *Palmira Valadares* (supra), this Court considered issue whether in a suit for permanent injunction filed by a person claiming to be tenant in respect of a property against another person claiming to be the tenant in respect of the same property would lie before Mamlatdar under Agricultural Tenancy Act or not, and while answering such issue, observed in paragraph No. 7 as under:-

> "*7. As rightly submitted by learned advocate for the respondent, the decision of the Judicial Commissioner in the matter of Sanvlo Fatu Dabale and another v. Shivram Laxman Korgaonkar and another (supra) is of no assistance in the present case since the said decision was given entirely in relation to section 7 of the said Act. Section 7 of the said Act provides that if any question arises as to whether a person is a tenant or should be deemed to be a tenant under the said Act, then the Mamlatdar shall, after holding an enquiry, decide such question. In other words, it is only when such a question or issue arises as to whether a person is a tenant or not under the said Act that such an issue is required to be decided by the Mamlatdar after holding necessary enquiry. In a suit for injunction the main issue relates to possession. Merely because section 7 provides that the issue of tenancy is to be decided by the Mamlatdar that by itself cannot lead to the conclusion that invariably the Mamlatdar will have jurisdiction to decide the matters between a person who is tenant of the property against another who is totally a stranger to the property. The various provisions in the Agricultural Tenancy Act relate to the relationship between the landlord and the*

> *tenant. The various provisions giving protection to the tenant in the said Act are contemplated in order to safeguard the rights of a tenant vis-a-vis derogatory actions on the part of the landlord.*"

14. Similarly, in case of *Balkrishna Puno Naik* (supra), this Court observed that issue of possession is not a matter, which falls within the exclusive jurisdiction of tenancy authorities and the decision of Civil Court will have precedence in such matter.

15. Although Mr Singbal relied upon observations of Supreme Coiurt in case of *Inacio Martins* (supra), *Rajaram Patil* (supra) and *Manhohar Satardekar* (supra), those cases are completely different on factual aspects. In those cases, there was a dispute between tenant and landlord or the persons claiming through landlord regarding dispossession. In that scenario, when Plaintiff was claiming his tenancy right over suit property and wrongly dispossessed by the owners or persons claiming through them, it has been observed that the issue of tenancy would arise for consideration and the Mamlatdar would be the appropriate authority to deal with the same and grant relief of injunction, if any. However, in present case, there is no dispute between Plaintiff and landlord. *Prima facie*, claim of Plaintiff is supported by consistent revenue record. His name is appearing in Tenants column. As such, *prima facie*, there is sufficient material to hold that Petitioner is in possession of suit property

and there is semblance of tenancy right in his favour. Aforesaid aspects were sufficient to protect Plaintiff's possession by granting relief of temporary injunction in the suit.

16. In result, Writ Petition partly succeeds.

17. Impugned order dated 25.11.2025 passed by District Judge-3, Merces, sitting at Ponda, in Misc. Civil Appeal No.43/2023, is modified. The directions to the extent of demolition of suit shed and removal of cement poles with barbed wire fencing from the suit property bearing Survey No. 187/3 of Village Priol, Ponda, is hereby quashed and set aside. Rest of the order is maintained.

18. Accordingly, Writ Petition stand disposed of.

19. In view of disposal of Writ Petition, Civil Application No.28/2026 also stands disposed of.

S. G. CHAPALGAONKAR, J.

Signed by: JOSE FRANCISCO DSOUZA
Designation: Personal Assistant
Date: 19/10/2026 16:39:26