



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER NO. 998 OF 2023**

1. Harshad Gawde  
Age 33 years, Indian Inhabitant  
Occupation Business,  
R/o Everest Colony, Beturkar Pada  
Taluka Kalyan Dist Thane 421301
2. Gorakh Dnyandeo Sable  
Age 53 years, Indian Inhabitant  
Occupation Business,  
R/o Tukaram Niwas Kala Talav  
Beturkar Pada, Taluka Kalyan  
Dist Thane 421301

... Appellants.  
(Orig. Defendants)

**Versus**

M/s. Swati Builders  
A parntership firm, duly registered under  
Indian Partnership Act, through its Partner  
Shri Manish Prakash Mutha,  
Age – 37 years, Indian Inhabitant  
Occupation Business  
Having its registered office at  
101-103, 1<sup>st</sup> Floor, Vikas Heights,  
Santoshi Mata Road, Kalyan West  
Dist Thane 421301

... Respondent.  
(Orig. Plaintiff)

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*Mr. Vishal Kanade a/w. Amrut Joshi, Rakesh V. Misar, Bhushan Raut,  
Vaishnavi Tiwari and Rahul Jadhav i/by RVM Legal for Appellant.*

*Mr. Mayur Khandeparkar a/w. Aniesh Jadhav, Ativ Patel and Harshad  
Vyas i/by AVP Partners for Respondent.*

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**Coram : Sharmila U. Deshmukh, J.**  
**Reserved on : July 14, 2026**  
**Pronounced on : July 27, 2026**

**JUDGMENT :**

1. Heard. **Admit.** With consent, taken up for final hearing forthwith.
2. The present appeal is at the instance of the original Defendant Nos.1 and 2 being aggrieved by the impugned order dated 3<sup>rd</sup> May, 2023 passed by the Trial Court injunctioning the Defendant Nos.1 and 2 from entering and creating any third-party rights in respect of the suit property.
3. Special Civil Suit No.403 of 2022 was filed seeking *inter alia* a declaration that the Defendant Nos.1 and 2 are not the partners of the Plaintiff firm and have no authority in law or any right, title and interest to deal with the suit properties and that the registered sale deed dated 5<sup>th</sup> May, 2022 executed by the Defendant Nos.1 and 2 by acting as partners of the Plaintiff firm is illegal and null and void and not binding on the Plaintiff and be cancelled.
4. The suit property is described in plaint paragraph 2 as CTS Nos. 631, 632, 2765 and 2766 admeasuring 5910.55 square meters and is referred to as suit property no 1, 2, 3 and 4 individually. The Plaintiff came with the case that the suit property no.1 was

acquired from one Anandji Daya Rathod and 19 other co-owners by registered development agreement dated 15<sup>th</sup> July, 2002 and the entire consideration was paid by the Plaintiff and registered Power of Attorney (PoA) dated 15<sup>th</sup> July, 2002 was executed in favour of the Plaintiff with full ownership rights in respect of the suit property. The plaint further sets out similar agreements which were executed on 23<sup>rd</sup> July, 2003, 10<sup>th</sup> September, 2003 and 15<sup>th</sup> July, 2002 in respect of the suit property Nos.2, 3 and 4. It is pleaded that Defendant No.2 was earlier the partner of the Plaintiff firm but had retired on 17<sup>th</sup> October, 2011 and has executed the registered sale deed dated 5<sup>th</sup> May, 2022 acting as partner of the Plaintiff without any authority and on the basis of the PoA executed by the landowners in favour of the Plaintiff.

5. The written statement contend that in or about 2002-2003, the development rights of the four suit properties was purchased by late Balu Gawde and Defendant No.2 from the original owners and for the sake of convenience, the documents were executed in the name of Plaintiff. At that point of time there were two partners of the firm and as the consideration was paid by Balu Gawde and Defendant No.2, hence the documents came to be executed in favour of Balu Gawde and the defendant No.2 as partners of

Plaintiff along with the irrevocable PoA. In an attempt to generate funds in the partnership account, in the year 2011, Manish Mutha and Pravin Chhajer were taken as partners and it was agreed that they will infuse funds in the partnership, so that late Balu Gawde and defendant No.2 can be refunded the amounts paid by them for acquiring the development rights in the property. As the funds were not brought in by Manish Mutha and Pravin Chhajer, the development rights in the property continued to be owned by late Balu Gawde and defendant No.2. As Manish Mutha and Pravin Chhajer had never paid any amount towards the capital contribution of Swati Builders, they were never effectively inducted as partners of the said firm. In 2009, Balu Gawde applied for non-agricultural use of the property and the entire expenses of the suit property was incurred by Balu Gawde and Defendant No.2.

**6.** In February, 2021, Balu Gawde expired and in July, 2021, a partnership deed was executed between the defendants re-constituting a partnership firm called "Swati Builders" for development of the suit properties, which was the subject matter of the development agreement and the sale deed of 5<sup>th</sup> May, 2022 was executed by defendant no.2 in favour of the partnership firm of the two Defendants. The Defendants are in actual and physical

possession of all the suit properties and there is no relief sought of recovery of possession of the suit properties from the Defendants.

7. The application under Order 39 Rule 1 and 2 of Code of Civil Procedure, 1908 (for short, "**CPC**") sought injunctive reliefs against the defendants from misusing the sale deed of 5<sup>th</sup> May, 2022 and from entering into the suit properties and disturbing the lawful possession of the Plaintiff over the suit properties and not to create any third party interest in respect of the suit properties.

8. The Trial Court noted that Defendant Nos.1 and 2 have reconstituted the firm with themselves and Late Balu Gawde as partners. It noted that Defendant no 2 has already retired from the firm on 17<sup>th</sup> October, 2011 and opined that upon death of Balu Gawde, Defendant No 1 could have raised appropriate demand for being inducted as partner of the Plaintiff firm. It held that there is no document to establish that Defendant Nos.1 and 2 are partners of the Plaintiff. It held that the sale transaction had taken place when Balu Gawde and Defendant No.2 were partners of the Plaintiff firm.

9. The Trial Court perused the conveyance of 5<sup>th</sup> May, 2022 and observed that the earlier conveyance has been annexed to the indenture of the year 2022 by using the PoA of 2002. The Trial

Court held that it is not open for Defendants to raise a challenge to the admission of Manish Mutha and Pravin Chajjed in the partnership firm.

**10.** The Trial Court opined that the suit properties were purchased by the Plaintiff firm in the year 2003 and consideration was paid by the firm. It declined to accept the photographs produced by the Defendants as proof of possession.

**11.** Mr. Kanade, learned counsel appearing for the Defendants have stated the history of the constitution of the partnership firm of Swati Builders, the retirement of other two partners leaving only Balu Gawde and Gorakh Sable as the partners of the partnership firm in the year 1991. He would further submit that the registered development-cum-sale agreement as well as the PoA in respect of the four suit properties were executed by the father of the defendant No.1, who is now deceased and the defendant No.2 as partner of Swati Builders. He submits that on 17<sup>th</sup> October, 2011, the defendant No.2 retired as partner and Balu Gawde, Manish Mutha and Pravin Chhajed continued the firm as Swati Builders. He submits that as Manish Mutha and Pravin Chhajed did not contribute any funds, the deed of reconstitution was effectively never acted upon between the parties.

**12.** He would submit that on 23<sup>rd</sup> July, 2021, there was reconstitution of partnership deed between the defendant No.1 and Defendant Nos.2 and on 5<sup>th</sup> May, 2022, the sale deed was executed by the original owners of the suit properties in favour of the defendants as partners of Swati Builders. He submits that the suit is bad for non joinder of original owners, who are necessary parties. He would further submit that under the PoA executed in the year 2002-2003, the original owners granted authority to defendant No.2 and late Balu Gawde to deal with the suit properties on behalf of the original owners. He has taken this Court in detail through the findings of the Trial Court and would submit that the Plaintiff has failed to make out a *prima facie* case as the development agreements were executed by Balu Gawde and Defendant No.2 and the payments in respect of the suit property was made by them. He would further submit that the incoming partners were inducted only upon payment of Rs.50,000/- and are now seeking to stake a claim to the valuable suit properties.

**13.** On the aspect of possession, he would point out that the Trial Court has rejected the photographs by considering only the first photograph as the same reflected the notice put up on the suit property in the background without noticing the other

photographs taken from inside of the suit properties. He submits that the possession of the suit property was given to the defendant Nos.1 and 2 as partners of Swati Builders and the possession is still with them. He submits that the Plaintiff has to make out a case of being in possession of the property and there is no document produced by them to demonstrate the same. He would submit that at the highest, the injunction against creating third party rights could have been granted. He would further submit that the Trial Court overlooked the legal position that the partnership firm does not enjoy any independent legal existence and the possession was with the defendant no.2 and the father of the defendant no.1 all along. He submits that there is no title deed/document to *prima facie* show that Manish Mutha derived title with respect to the suit properties and being admitted to the firm of Swati Builders in the year 2011, he had no personal knowledge of the transactions/payments made to the original owners. He submits that there is a cloud on the title of original plaintiff to the suit property and without declaration of title, the present suit is not maintainable. He would submit that in order to protect possession, the plaintiff is first required to prove not only title to the property but also that it is in physical possession. He submits that



admittedly, late Balu Gawde was a partner and was a co-owner of the suit properties and as legal heir, the Defendant No.1 would have a right as co-owner and could not be restrained from entering into the suit properties.

**14.** *Per contra*, Mr. Khandeparkar, learned counsel appearing for the Respondent-original plaintiff would submit that on 1<sup>st</sup> September, 1991 upon the retirement of the other partners of the firm, it was only Balu Gawde and Gorakh Sable, who continued the business as partners of the firm and therefore, the PoA and development agreements were executed by them, though, in their capacity as partners of the firm. He submits that after defendant no.2 retired on 17<sup>th</sup> October, 2011, Manish Mutha and Pravin Chhajed joined as partners along with Balu Gawde and continued the business. He submits that on 18<sup>th</sup> February, 2021, Balu Gawde expired and Manish Mutha and Pravin Chhajed along with Shyam Ahuja Pvt. Ltd. continued the business as partners of the firm and defendant No.1 Harshad Gawde was never concerned with the plaintiff firm in any capacity and was never inducted as partner.

**15.** He submits that after the death of Balu Gawde, on 21<sup>st</sup> July, 2021, the defendants reconstituted a new partnership firm along with Balu Gawde, who had expired with the same name i.e. Swati

Builders for the purported development of the suit property, despite the defendant no.2 having retired in the year 2011 and defendant No.1 never being a partner of the Plaintiff firm. He submits that by the impugned deed of conveyance of 5<sup>th</sup> May, 2022, the Defendants as partners of the new firm purported to acquire rights in the suit property using the PoA that was executed in the year 2002-2003 in favour of the Plaintiff firm-Swati Builders and the undertaking annexed to the conveyance clearly refers to the PoA executed in the year 2002-2003 in favour of the Plaintiff firm, as the only purported authority for executing the impugned conveyance. He submits that the Trial Court has rightly held that the Defendants have not furnished any proof of being partners of the Plaintiff firm at the time of execution of the sale deed of 5<sup>th</sup> May, 2022.

**16.** He submits that the under the registered documents executed in the year 2002-2003, the possession was handed over as partners of the firm and not in their individual capacity and the possession remained with the partnership firm. He submits that as the property is a vacant land, possession follows title. He submits that as the defendants have failed to prove their right in the suit properties as well as possession, the Trial Court has rightly restrained the defendants from entering into the suit properties

and from creating any third party rights. He submits that the contention that the suit is bad for non-joinder of the original owners was not a submission canvassed before the Trial Court. He submits that in any event, the challenge was to the registered sale deed of 5<sup>th</sup> May, 2022 which was executed on the basis of PoA and therefore, there is no requirement of impleading the original owners.

**17.** Rival contentions now fall for determination:

**18.** The suit is filed by the partnership firm of Swati Builders through its partner Manish Mutha against Harshad Balu Gawde, who is the son of the deceased Balu Gawde and Gorakh Dyandeo Sable, who was a partner of the partnership firm and had retired on 17<sup>th</sup> October, 2011. It is not in dispute that the development rights in respect of the suit properties were acquired in the year 2002 in the name of the partnership firm i.e. Swati Builders. Though it is sought to be contended that the suit properties were acquired in the name of the partnership firm for the sake of convenience, the registered development agreements as well as the PoA have been executed in favour of the partnership firm. The registered indentures executed on 15<sup>th</sup> July, 2002, 23<sup>rd</sup> July, 2003 and 10<sup>th</sup> September, 2003 were executed when the plaintiff firm comprised

of only two partners i.e. Balu Gawde and Gorakh Sable and hence, the PoA were executed in favour of Balu Gawde and Gorakh Sable in their capacity as partners. Having admitted that on 17<sup>th</sup> October, 2011, Gorakh Sable had retired, there is no right demonstrated by Gorakh Sable in respect of the partnership's assets. Further defendant no.1 is the son of Bala Gawde, who was a partner of the firm and had expired on 18<sup>th</sup> February, 2021. The defendant no.1 was never inducted as a partner of the Plaintiff firm.

**19.** Right from the year 2002-2003, the registered development agreements and the PoA stand in the name of the Plaintiff firm and upon the reconstitution of a partnership firm, Manish Mutha and Pravin Chhajed has been inducted on 17<sup>th</sup> October, 2011 and after the death of Balu Gawde on 18<sup>th</sup> February, 2011, Manish Mutha, Pravin Chhajed and Shaym Ahuja Pvt. Ltd. continued the business of the partnership firm.

**20.** Defendant No.1 and 2, who are not concerned with the partnership firm as the defendant No.1 was never inducted as partner of the firm and defendant No.2 has retired from partnership firm in the year 2011, have executed a registered sale deed on 5<sup>th</sup> February, 2022 as partners of Swati Builders. Perusal of the conveyance deed indicates that reference is made to the

development agreements executed in the year 2002-2003 and the consideration paid in the year 2002 to the original owners. The conveyance deed confirms that the original owners have executed the documents on 17<sup>th</sup> July, 2002, 23<sup>rd</sup> July, 2003, 10<sup>th</sup> September, 2003 and 17<sup>th</sup> July, 2002, and that the possession of the entire properties have been handed over by the original owners under the indenture of 2002-2003 and continued to be in possession of the defendants. The conveyance deed has been signed by Harshad Gawde as partner of the partnership firm and by Gorakh Sable as party of one part and by Gorakh Sable as the PoA holder of the original owners nos.1 to 20. To the conveyance deed is annexed the development agreements of the year 2003. It is therefore clear from the conveyance deed executed on 5<sup>th</sup> May, 2022, that the same is in fact reconfirmation of the sale transactions of the year 2002-2003 and have been executed by the defendants as partners of Swati Builders and by the Defendant No.2 as the POA holder of the original owners which PoA was executed in favour of the Defendant No.2 in the year 2002. The irrevocable PoA executed in favour of Bala Gawde and Defendant No.2 was in their capacity as the partners of Plaintiff firm-Swati Builders and could not be utilized by defendant No.2 after having retired from the

partnership firm in the year 2011.

**21.** The defendants constituted a new partnership firm on 23<sup>rd</sup> July, 2021 of the same name i.e. Swati Builders and have attempted to create a title in favour of the defendants by executing sale deed of 5<sup>th</sup> May, 2022. The reconstituted partnership deed on 23<sup>rd</sup> July, 2021 has been entered into between the defendant Nos.1 and 2 as well as the Balu Gawde, whereas Balu Gawde had already expired on 18<sup>th</sup> February, 2021. During the submissions, there is no explanation tendered as to how the firm could have been reconstituted on 23<sup>rd</sup> July, 2021 with deceased person as a partner of the firm. It is evident that a *prima facie* attempt has been made to utilize the name of Balu Gawde, who was a partner of the firm till he expired on 18<sup>th</sup> February, 2021.

**22.** The Trial Court has rightly noted that the indentures which was executed in the year 2002-2003 were in the name of Plaintiff firm Swati Builders, with which the defendant No.1 had no concern as he was never inducted as partner of the firm and insofar as the defendant no.2 is concerned, he had already retired in the year 2011. In event the defendant No.1 claimed any right by reason of being a legal heir of Balu Gawde an appropriate demand could have been made. However, the defendants have adopted a dubious

method of reconstitution of the partnership firm of Swati Builders by including the deceased Balu Gawde as the partner of the firm and subsequently executing the sale deed of 5<sup>th</sup> May, 2022.

**23.** As no right accrued to the defendants to execute sale deed on behalf of the partnership firm, the suit was rightly filed by the plaintiff seeking a declaration that the registered sale deed of 5<sup>th</sup> May, 2022 is null and void.

**24.** The contention that the original owners were not impleaded as parties to the suit was not raised before the Trial Court. That apart, perusal of the deed of conveyance would indicate that the defendant no.2 has executed the sale deed by utilizing the PoA of the year 2002 which was executed in favour of the original owners as partners of the Swati Builders. The deed of conveyance dated 5<sup>th</sup> May, 2022 has not been executed by the original owners but by the defendant No.2 as the constituted attorney of the original owners. The suit is presently at the exhibit 5 stage and it can always be amended to implead the original owners as party to the original proceedings, if required.

**25.** By exhibit 5 application, the relief sought was to restrain the Defendants from creating any third party rights in the suit properties, as the conveyance deed have been executed on 5<sup>th</sup> May,

2022, and from restraining the Defendants from entering into the suit properties. *Prima facie*, the development agreements as well as the PoA executed in the year 2002-2003 demonstrates ownership rights in favour of the Plaintiff firm. There is no cloud which is raised over the title of the Plaintiff firm as the documents of 2002-2003 have been admitted by the Defendants in the written statement and it is also admitted that the documents have been executed in the name of Swati Builders. Similarly, there can be no challenge to the admission of incoming partners at the instance of Defendants, who are not the partners of the partnership firm.

**26.** On the aspect of the possession, the documents produced by the Defendants to demonstrate their possession were the photographs. The photographs on record, which are from the inside and outer portion of subject property, are by itself insufficient to come a finding that the Defendants are in possession of the suit property. The development-cum-sale agreements contained a recital that the possession has been handed over to the Plaintiff firm. The Defendant No.2 had retired from the partnership firm in the year 2011 and could not be said to be in possession of the suit property. Insofar as the Defendant no.1 is concerned, he was never inducted in the partnership firm. It is an admitted position that the



suit properties are vacant land in which case the possession would follow title and the development agreements which have been executed in the year 2002-2003 *prima facie* indicates the title in favour of the plaintiff firm.

**27.** The Trial Court has rightly noted that the sale deed of 5<sup>th</sup> May, 2022 refers to the defendants as partners of the partnership firm and there are no documents produced on record to demonstrate that the defendants were partners of the plaintiff firm. It has also rightly noted that the suit properties were purchased in the name of the partnership firm and the same properties are sought to be shown as being purchased under the conveyance deed of 2022 on the basis of the PoA executed in the year 2002 by the original owners in favour of Swati Builders. It also rightly noted that if the case of the Defendants is that the suit properties are the individual properties of the partners, then there was no necessity of reconstitution of the firm in the year 2021.

**28.** For the purpose of grant of the injunctive relief of the defendants, it was necessary for the plaintiff firm to demonstrate a *prima facie* case, balance of convenience and irreparable loss and injury. The indenture of the year 2003-2003 would *prima facie* indicate the development agreement being executed by the

original owners in favour of the plaintiff firm. Upon retirement of the Defendant No.2 in the year 2011, there was no right remaining in the Defendant no.2 in the partnership's assets. The Defendant no.2 after having retired from the firm in the year 2011 had not instituted any proceedings claiming to be continuing as partner of the firm and seeking any reliefs in respect of the partnership's assets or share in the profits. After lapse of almost 10 years, the Defendant no.2 along with Defendant no.1 have reconstituted a partnership deed in the same name and have created an indenture styled as "conveyance deed" which is executed by the Defendants as partners of the partnership firm of Swati Builders mis-utilizing the PoA of the year 2003. *Prima facie*, the document of 5<sup>th</sup> May, 2022 cannot create any ownership rights in favour of the purported reconstituted partnership firm of Swati Builders and or in favour of the defendants. The Plaintiff has *prima facie* proved its ownership rights in the suit properties by virtue of registered documents of 2003-2003.

**29.** Insofar as the possession is concerned, there is nothing produced on record to demonstrate the defendants' possession over the suit property apart from the photographs. The recitals in the development agreements show that the possession was

handed over to the plaintiff firm and being a vacant land possession follows title. Insofar as the balance of convenience is concerned, till the purported reconstitution of the partnership firm in the year 2021, neither the defendant No.1 nor the defendant No.2 were partners of the partnership firm. The suit property which was purchased in the name of the partnership firm was sought to be fraudulently conveyed in favour of the reconstituted firm. The documents of the year 2003-2003 in favour of the Plaintiff firm and the admission of the induction of the partners of the Plaintiff firm in the year 2011 tilts the balance of convenience in favour of the plaintiff firm. In event, the Defendants, who *prima facie* do not have any semblance of right in the suit property are not restrained from interfering in the plaintiff's possession, irreparable injury would be caused to the Plaintiff as it would not be entitled to deal with its own property.

**30.** In light of the above, the Trial Court has rightly exercised the discretion and there is no warrant for interference with the order of the Trial Court. Resultantly, the Appeal fails and stands dismissed.

**[Sharmila U. Deshmukh, J.]**