

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2110 OF 2015

KALYAN SUKHDEO TARDE

PETITIONER

VERSUS

RAOSAHEB NARHARI SHAHANE

RESPONDENT

Mr.S.R.Dheple, Advocate for the petitioner.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 03/03/2015

PER COURT :

1. The petitioner is the original defendant in RCS No.29/2014. By order dated 28/03/2014, application Exh.5 filed by the plaintiff, has been allowed and injunction under Order 39 Rule 1 of the CPC has been clamped against the petitioner.

2. The petitioner has preferred Misc.Civil Appeal No.35/2014. By judgment and order dated 07/11/2014, the appeal has been dismissed.

3. Grievance of the petitioner is that there is no evidence in favour of the plaintiff and it was not conclusively proved before the Trial Court that the plaintiff is in possession of the suit property. The sale deed relied upon by the plaintiff is bogus and is in opposition to the

Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act. It is further contended that the boundaries mentioned by the plaintiff in the plaint do not match with the boundaries set out in the sale deed. The petitioner claims to be in the possession of the suit premises.

4. I have considered the submissions of the petitioner and have gone through the petition paper book with his assistance. An interlocutory order dated 28/03/2014 is the subject matter of this petition. The Trial Court has arrived at a prima facie conclusion as set out in paragraph Nos. 12, 13 and 14 that the plaintiff is in possession of the suit property. It is also prima facie appreciated that the plaintiff's name appears in the ownership column in the 7/12 extract. The Trial Court did not find any such material evidence which would prima facie establish that the petitioner is in possession. The Appeal Court has also arrived at the same conclusions by once again scrutinizing the record available.

5. Merely because a second view is possible, would not mean that the impugned orders are unsustainable. The Trial Court as well as the Appeal Court have prima-facie considered the available record and have drawn their conclusions.

6. In these circumstances, I do not find that the impugned order could be termed as perverse or erroneous. The petition, being devoid of merits, is therefore, dismissed.

(RAVINDRA V. GHUGE, J.)