

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**WRIT PETITION NO.5651 OF 2015**

1. Shivkumar s/o Gangadhar Vibhute,  
Age: 36 years, Occ: Agri.,
2. Nagesh s/o Gangadhar Vibhute,  
Age: 25 years, Occ: Agri.,
3. Gangadhar s/o Santu Vibhute,  
Age: 65 years, Occ: Agri.,
4. Shantabai w/o Gangadhar Vibhute,  
Age: 65 years, Occ: Agri.,
5. Devidas s/o Gangadhar Vibhute,  
Age: 39 years, Occ: Agri.,

All R/o. Chondi, Tq. Dharmabad,  
Dist. Nanded.

...Petitioners

versus

1. Laxman s/o Maroti Vibhute,  
Age: 70 years, Occ: Agri.,
2. Maroti @ Chandu s/o Laxman Vibhute,  
Age: 37 years, Occ: Agri.,
3. Madhav s/o Laxman Vibhute,  
Age: 35 years, Occ: Agri.,

All R/o. Chondi, Tq. Dharmabad,  
Dist. Nanded.

...Respondents

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Mr. V.D. Salunke, Advocate for petitioners

Mr. A.G. Godhamgaonkar, Advocate h/f Mr. K.P. Reddy,  
Advocate for respondent No.1

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**CORAM : N.W. SAMBRE, J.**

**Reserved on : 03/12/2015  
Pronounced on:07/12/2015**

**ORAL ORDER :**

Present petition is by the petitioners-defendants questioning the order of injunction passed by learned Civil Judge, Junior Division, Dharmabad below Exhibit-5 in Regular Civil Suit No. 28 of 2014, suit for declaration of ownership in the matter land Gat No. 130 admeasuring 2 Hector 36 Are and also the order passed in Misc. Civil Appeal No. 19 of 2014 by the District Judge-1, Biloli, District Nanded confirming the order of grant of injunction against the present petitioners-defendants and dismissing the appeal by an order dated 16/03/2015.

2. Heard Mr. Salunke, learned Counsel for the petitioners-defendants and Mr. Godhamgaonkar, learned Counsel for respondent No.1-plaintiff.

3. It is the case of respondents-plaintiffs that the Court lacks jurisdiction to entertain the suit and it is claimed that Santu Jakoji Wani was ancestor of only defendants and not of plaintiffs and the plaintiffs were never in possession of the suit land. It is further claimed that at the behest of defendant No. 5, measurement of land Gat No. 130 was carried out on 25/10/2013 and 26/10/2013, however, same measurement was not carried out properly, against which the appeal preferred by defendant No. 5 before D.I.L.R is

pending. It is further claimed that the plaintiffs have sold their entire portion of Gat No. 181 before 25 years and possession of land Gat No. 130 is that of defendants and as such, the case of obstruction or threat by the defendants to the plaintiffs is incorrect and false.

4. The plaintiffs-respondents claimed that the plaintiffs and defendants are relatives having common ancestor Santu Wani, holder of 110 acres and 39 gunthas. There was partition of land amongst heirs without any measurement and respective parties were enjoying their share thereafter. According to plaintiffs, land Gat No. 130 is part and parcel of old Survey No. 46 and defendant Nos. 1 to 5 got measured land Gat No. 130, wherein it is noticed that it is the plaintiffs, who are in possession of the suit property, which has resulted into filing of suit in view of threats by the defendants.

5. Learned trial Court has framed the following points for consideration and answered the same accordingly.

- |                                                                                  |                     |
|----------------------------------------------------------------------------------|---------------------|
| (1) Do the plaintiffs prove that they have<br>prima facie case in their favour?  | In the affirmative. |
| (2) Do the plaintiffs prove that balance<br>of convenience lies in their favour? | In the affirmative  |
| (3) Do the plaintiffs prove that they                                            |                     |

will suffer irreparable loss and  
injury which cannot be compensated  
in terms of money?

In the affirmative.

(4) What order?

As per final order.

6. Learned trial Court noticed that during measurement at the behest defendants carried out on 25/10/2013 and 26/10/2013 the D.I.L.R. noticed that the plaintiffs are in possession of land Gat No. 130 to the extent of 2 Hectar 36 Are. Learned trial Court then considered 7/12 entries and proceeded to pass an order of injunction against the defendants-petitioners. The lower Court, at the behest of the petitioners, reappreciated the entire matter afresh, having framed following points for consideration.

- |                                                                       |                          |
|-----------------------------------------------------------------------|--------------------------|
| (1) Do plaintiffs prove prima facie case?                             | Yes, proved by plaintiff |
| (2) In whose favour, balance of<br>convenience lies?                  | In favour of plaintiffs  |
| (3) Who suffer irreparable loss in<br>case injunction is not granted? | To the plaintiffs        |
| (4) What order?                                                       | As per final order       |

7. The lower appellate Court also considered measurement carried out on 25/10/2015 and 26/10/2013 by D.I.L.R., wherein specific mention in the panchnama was made that plaintiffs were in

possession of the suit property and then considered the map of surveyor and also 7/12 extract as regards Gat No. 130 and dismissed the appeal.

8. In the light of above referred submissions and in view of findings recorded, this Court has proceeded to analyze the submissions made. Amongst other submissions made is that both the Courts below have not applied its mind to revenue entries of the suit land in favour of the petitioners-defendants.

9. It is required to be noted that the petition is against the concurrent findings of fact recorded by both the Courts below.

10. Admittedly, the measurement carried on 25/10/2013 and 26/10/2013 is at the behest of the present petitioners, even in which specific mention is made in the report that the plaintiffs are in possession of the suit property. Apart from above, it is to be noted that entries in 7/12 extract, if any, in favour of plaintiffs are only for fiscal purpose. The Court below has also taken into account the map of surveyor and ownership of plaintiffs to land Gat No. 181 and 130. After having considered dimensions of property of the plaintiffs and that of defendants and findings of measurement, the Court proceeded to confirm the injunction in favour of the plaintiffs.

11. In view of above, in my opinion, concurrent findings as are recorded by trial Court and lower appellate Court do not call for any interference, as findings of facts are in tune with the pleadings and evidence that is brought on record. Once the concurrent findings are noticed, this Court should be slow in interfering, particularly under its extraordinary writ jurisdiction. As such, the writ petition fails, stands dismissed.

**[ N.W. SAMBRE, J. ]**