

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

WRIT PETITION NO. 10263 OF 2015

Dadarao Narayanrao Indrale,
Age: 70 years, Occ. Agril.,
R/o Tivghal, Tq. Chakur,
Dist. Latur

...PETITIONER

(ori. defendant in RCS No. 83 of 14
and plaintiff in RCS No. 97 of 2014)

versus

1. Govindrao S/o Venkati Mutthe,
Age: 50 years, Occ. Agri.,
R/o : Tivghal, Tq. Chakur,
Dist. Latur.
2. Lochanabai W/o Prakash Ghadge,
Age: 47 years, Occ. Household & Agri.
R/o : Shrirur (A) Tq. Shirur (A)
Dist.: Latur.
3. Kalindabai W/o Ratnakar Pawar,
Age: 42 years, Occ. Household & Agri.
R/o Ashta, Tq. Chakur,
Dist. Latur.
4. Ushabai W/o Balaji More,
Age: 35 years, Occ. Household & Agri.
R/o Tivghal, Tq. Chakur,
Dist. Latur.

...RESPONDENTS

(ori. plaintiffs in RCS No. 83 of 2014
and in defendants RCS No. 97 of 2014)

**WITH
WRIT PETITION NO. 9513 OF 2015**

Dadarao Narayanrao Indrale,
Age: 70 years, Occ. Agril.,
R/o Tivghal, Tq. Chakur,
Dist. Latur

...PETITIONER

(ori. defendant in RCS No. 83 of 14
and plaintiff in RCS No. 97 of 2014)

versus

Venkati S/o Pandurang Mutthe,
(died) through his L.Rs.

- 1.a Govindrao S/o Venkati Mutthe,
Age: 50 years, Occ. Agri.,
R/o : Tivghal, Tq. Chakur,
Dist. Latur.
- 1.b Lochanabai W/o Prakash Ghadge,
Age: 47 years, Occ. Household & Agri.
R/o : Shrirur (A) Tq. Shirur (A)
Dist.: Latur.
- 1.c Kalindabai W/o Ratnakar Pawar,
Age: 42 years, Occ. Household & Agri.
R/o Ashta, Tq. Chakur,
Dist. Latur.
- 1.d Ushabai W/o Balaji More,
Age: 35 years, Occ. Household & Agri.
R/o Tivghal, Tq. Chakur,
Dist. Latur.

...RESPONDENTS

(ori. plaintiffs in RCS No. 83 of 2014
and in defendants RCS No. 97 of 2014)

.....
Mr. T.M. Venjane, Advocate for Petitioner
Mr. M.P. Kale, Advocate for respondents.

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CORAM : SUNIL P. DESHMUKH, J.

DATED : 16th OCTOBER, 2015

Order :-

1. Regular Civil Suit No. 83 of 2014 has been instituted by one Govindrao S/o Venkati Mutthe and three others seeking injunction in respect of property bearing No. 156/2 admeasuring 40 Aar wherein Dadarao Indrale petitioner in writ petition No. 10263 of 2015 is defendant. Said Dadarao Indrale has also instituted a Regular Civil Suit No. 97 of 2014 against said Govindrao S/o Venkati Mutthe and others (plaintiffs in Regular Civil Suit No. 83 of 2014) claiming specific performance of agreement of sale dated 12th June, 1995 and for perpetual injunction.

2. Writ petition No. 10263 of 2015 has been preferred by Dadarao Indrale-defendant in Regular Civil Suit No. 83 of 2014 (plaintiff in Regular Civil Suit No. 97 of 2014). Another writ petition bearing No. 9513 of 2015 has also been preferred by said Dadarao Indrale.

3. Plaintiffs - Govindrao in Regular Civil Suit No. 83 of 2014 moved application for temporary injunction Exhibit-5 which came to be rejected under order dated 21-02-2015 by Joint Civil Judge, Junior Division, Chaukur. Against said order, plaintiffs had moved Miscellaneous Civil Appeal No. 20 of 2015 whereas defendant in Regular Civil Suit No. 83 of 2014.

4. Dadarao Indrale - plaintiff in Regular Civil Suit No. 97 of 2013 had also moved application for injunction against defendants (plaintiffs in Regular Civil Suit No. 83 of 2014) in said suit. That application also came to be rejected under separate order dated 21-02-2015 by Joint Civil Judge, Junior Division, Chaukur. Against said order, Dadarao-present petitioner moved Miscellaneous Civil Appeal No. 22 of 2015.

5. Both appeals have been decided by common judgment on 20-04-2015 by District Judge-4, Latur, whereunder Miscellaneous Civil Appeal No. 20 of 2014 filed by present respondents has been allowed whereas Miscellaneous Civil Appeal No. 22 of 2015 filed by present petitioner has been dismissed.

6. Since the matters have been decided by common judgment, the parties are referred to by their present status in writ petitions.

7. Petitioner contends that Venkati Pandurang Mutthe - father of present respondent No. 1 Govindrao, had entered into an agreement for sale dated 12th June, 1995 in respect of 40 *Aar* land forming part of land Gut No. 156/2 and that he had been put in his possession. Accordingly, he contends to have continued to be in possession of said area. Since, revenue record depicted that in respect of land Gut No. 156/2 Venkati's name had been shown only to the extent of 12 *Aar* land, it was agreed by Venkati Mutthe that necessary corrections in revenue record will be made and thereafter sale-deed as per corrected revenue record will be executed. However, in the interregnum Venkati died.

8. According to the learned counsel for petitioner, agreement to sell was executed by Venkati as well as respondent No. 1-Govindrao. After the death of Venkati, around 2014 necessary mutation entry in respect of correction of revenue record of Gut No. 156/2 had taken place and thus the petitioner is demanding execution of sale-deed for the area pursuant to correction, however, the respondents purport to deny execution of agreement to sell. As such, the petitioner instituted suit bearing Regular Civil Suit No. 97 of 2014.

9. It is submitted on behalf of the respondents that no such document of agreement to sell has been executed by Venkati or, for that matter, by respondent No. 1- Govindrao. It is contended that to harass the respondents, around 2014 petitioner had dabbled with their possession over land bearing Gut No. 156/2, as such, they had

instituted suit bearing Regular Civil Suit No. 83 of 2014. It is further being contented that revenue record does not at all depict that petitioner ever had been in possession.

10. I have heard learned counsel appearing on either side. Learned counsel for petitioner heavily relied on the affidavit filed by the adjoining land holders/owners, albeit, there is dispute about it, whereas the respondents have relied on the revenue record. It appears that the appellate court, in its common judgment in two Miscellaneous Civil Appeals considered rival submissions and has discussed material, record in detail. For ready reference, reasons, as are appearing in paragraphs No. 13 and 14, are reproduced hereinbelow:-

*“ 13. **POINT NO. 1 TO 4:-** The plaintiff in R. C. S. No. 97/2014 have claimed possession in the suit property on the strength of agreement o sale dated 12.06.1995. At this stage the Court has to see whose contention about the possession is acceptable on preponderance of probability to grant temporary injunction in his favour, and there is no need to see whether the execution of agreement to sale dated 12.06.1995 is proved or not. So, the affidavits filed by the scribe and witnesses to the said document need not to be looked into. In the context of possession the contents of the agreement to sale dated 12.06.1995 now to be seen to ascertain whether in reality the possession of the portion mentioned therein(which is alleged to be suit property) was delivered to the plaintiff in R. C. S. No. 97 of 2014. This document in para No. 2 discloses the four boundaries of the said portion. As per the four boundaries, on the southern side there is the property of Rajaram Pandurang Mutthe, on northern side there is property of wife of plaintiff namely, Shantabai Dadarao Indrale, on western side there*

is property of plaintiff himself, while on eastern side there is property of one Dnyanoba Bala Sathe. After having written four boundaries in para No. 2, in para no. 4, it is written that out of 40R portion only 12R portion is in the name of Venkati (the father of defendants), while balance 28R portion is recorded wrongly in the name of neighbouring land holder in the 7/12 extract in the consolidation scheme. It is further written that Venkati and his son the defendant No.1 in R. C. S. No. 97/2014 had taken responsibility to correct the said entry and then execute the sale deed in favour of the plaintiff. Along with this document there is 7/12 extract of block No. 156/1 wherein it is shown that Shantabai Dadarao Indrale, the wife of the plaintiff was owner of 83R portion, while Venkati Venkati was owner of 12R portion. The defendants have stated that the plaintiff had purchased 83R portion from their father Venkati in the year 1994 which is not denied by him. It appears that because of this the entry of name of his wife is present in the 7/12 extract of block No. 156/1. The 7/12 extract shows the cultivation column wherein there are entries from the year 1989-90 to 1996-97. This cultivation column also discloses that 80R portion was used for cultivation by the wife of plaintiff, while only 10R portion was used for cultivation by the wife of plaintiff while only 10R portion was used by the father of defendants Venkati. If this 7/12 extract is seen, prior to the year 1995 block No. 156 was divided in sub-numbers and 12R portion shown in the name of Venkati was the part of block No. 156/1. So, the contention in the agreement to sale that 12R portion was the part of block No. 156 and it was in the name of Venkati is unacceptable at this stage. Further fact is that, it is not mentioned in the agreement to sale that the rest of portion i.e. 28R portion of the suit property in the 7/12 extract of which land was wrongly noted by the revenue authority. It is further not noted, who is shown the owner of the said land. It was quite possible for either Venkati or the plaintiff Dadarao (in R. C. S. No. 97/2014) to get recorded the name of that owner in the agreement to sale to make

clear that though the 28R portion was wrongly recorded in the name of that person, he was not in actual possession of that portion. Rather the Venkati himself was in possession of that portion.

14. *The next fact to be noted here is that the plaintiff in R. C. S. No. 83/2014 (defendant No.1 in R. C. S. No. 97/2014) has come with the specific contention that in the year 1978 his father had sold 80R portion out of block No. 152 to one Rukhmaji Ramchandra Mutthe, but the effect of that sale-deed was given wrongly to the 7/12 extract of block No. 156. Thereafter Rukhmaji got recorded his name to the 7/12 extract of block No. 152, but his name was still remained in the 7/12 extract of the block No. 156. So, he himself (the defendant No.1 in R. C. S. No. 97/2014) by moving an application got corrected the revenue record of block No. 156/2. It is clear that block No. 156/2 is admeasuring 80R. It is not the case of the plaintiff in R. C. S. No. 97/2014 that 28R portion out of block No. 156/2 which was then in possession of Venkati was forming the part of suit property decided to sell him. It is not his further case that accordingly possession of 28R portion of block No. 156/2 and 12 R portion out of block No. 156/1 was given to him. The plaintiff (in R. C. S. No. 97/2014) could have brought on record that even if in the occupation column in 7/12 extract of block No. 156/2 the name of Rukhmaji was written, but in cultivation column in respect of 28R portion of that land i.e. block No. 156/2 his name is recorded and he has been taking crops from the said portion regularly. In short, the contention in para No.3 in agreement to sale and lack of revenue record in favour of plaintiff in R. C. S. No. 97/2014, at this stage, makes it clear that the plaintiff in R. C. S. No. 97/2014 has not been in possession of the suit property. The longstanding mum on the part of the plaintiff not to get recorded his name to the cultivation column in respect of suit property shows on preponderance that there is no force in his contention that he has been in possession of suit property. Rather the possession of suit*

property has to hold was with Venkati and thereafter with defendant No.1 for at this moment, the revenue record is in favour of plaintiffs in R. C. S. No. 83/2014. So, issue No.1 is answered as there is prima-facie case in favour of plaintiffs in R. C. S. No. 83/2014. ”

11. Having regard to the reasons as aforesaid, there does not appear to be any error in passing impugned order. It was not necessary to cause interference at *prima facie* stage, as the reasons cannot be said to be perverse. In view of the same, I am not inclined to interfere with impugned order.

12. Writ Petitions, as such, stand rejected.

13. Both learned counsel fairly concede to that issues in both the suits have been framed and request to direct the trial court to dispose of the suits as expeditiously as possible. The trial court may decide the suits as expeditiously as possible, preferably within a year from the date of receipt of writ of this order.

sd/-

(SUNIL P. DESHMUKH, J.)

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