

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

WRIT PETITION NO. 1797 OF 2015

Kundlik S/o Radhoji Deokar ... Petitioner

VERSUS

Sheshrao S/o Radhoji Deokar
& others ... Respondents

.....
Mr. G.B. Kulkarni , Advocate for petitioner
Mr. V.G. Shelke, A.G.P. for respondent Nos. 4 to 6
.....

CORAM : RAVINDRA V. GHUGE, J.

DATED : 25th FEBRUARY, 2015

PER COURT :

1. I have heard the petitioner at length. The petitioner is the defendant in R.C.S. No. 373 of 2013 which is filed for declaration of ownership of land Gat No. 225 and 184 situated at Village Pangari Khurd, Taluka Mantha. An interlocutory order granting Temporary injunction, is under challenge.

2. Application Exhibit 5 preferred by the respondent /plaintiff under Order XXXIX Rule 1 of the Code of Civil Procedure (CPC) has been allowed by order dated 27-11-2013. Based on the deed of partition, apportionment of land and available material before it,

the Trial Court has come to a conclusion that there was a deed of partition between the parties in favour of the plaintiff dated 07-05-1980. It was also observed by the Trial Court that the plaintiffs name appears to be recorded in the revenue records pertaining to field properties.

3. As such, the Trial Court prima-facie concluded that though the defendants are now denying the partition of 1980 and 2012, they have in their own documents submitted before the revenue authorities admitted that the lands were apportioned in favour of the plaintiff. It was, therefore, concluded by the learned Trial Court in the detail impugned order that prima-facie the plaintiffs appear to be in possession of the suit property.

4. The Trial Court has directed the defendants as follows :-

ORDER

- (i) Application is allowed with costs.
- (ii) Defendant No. 3 to 5 or any body claiming through them are temporarily restrained from disturbing possession of plaintiff over the suit field properties until final decision of this suit.
- (iii) Defendant No. 2 is temporary restrained from disbursing any compensation in respect of acquired 46 R land out of Gat No. 225 in favour of defendant No. 3 to 5 until final disposal of the suit.

5. The petitioner preferred Misc. Civil Appeal No. 28 of 2014 which has been dismissed by the impugned judgment and order dated 25-09-2014. The Appeal Court has considered the contentions of the petitioner as regards perversity in the findings of the Trial Court. Based on such contentions, the Appeal Court has considered the record and has concluded that there is no specific denial about the partition-deed and execution of agreement dated 11-10-2012 in the written statement filed by the defendants. It is also noted that the agreement dated 11-10-2012 indicates that the possession was handed over to the plaintiffs.

6. The Appeal Court has also considered that the plaintiffs were in possession of the other portion of the suit property from 1980 onwards. Taking into account the order of temporary injunction passed and the material available before it, the appeal was dismissed by the impugned judgment.

7. The petitioner while canvassing his submissions has virtually argued his entire case (as is before the Trial Court), as if this Court was hearing the petitioner on the merits of the suit.

8. An interlocutory order passed by the Trial Court was called in question before the Appeal Court and the Appeal has been

dismissed. Grievance of the petitioner is that certain records were not properly considered by the Trial Court and the Appeal Court as well, which would indicate that the petitioner has a right, title or interest in the suit property.

9. The petitioner appears to have lost sight of the fact that this Court was not hearing the petitioner on the merits of the suit.

10. Merely because a second view could have possibly been taken by the Appeal Court or the Trial Court, would not render the impugned orders perverse and erroneous. From the directions given by the Trial Court, I do not find that grave injustice can be said to have been caused to the petitioner.

11. The petition being devoid of merit is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)