

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9259 OF 2015

Shivaji Ramchandra Zambre and others

.. Petitioners

Versus

Smt. Sunita Jalindar Zambre and others

.. Respondents

Mr. A. M. Kulkarni, for the Petitioners.

CORAM : R.M. SAVANT, J.

DATE : 7th OCTOBER, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 24.08.2015 passed by the Learned Adhoc District Judge-1, Sangli, by which order the Appeal filed by the Petitioners being Misc. Civil Appeal No.52 of 2015 came to be dismissed and resultantly, the order dated 20.04.2015 passed by the Trial Court i.e. Learned Joint Civil Judge, Junior Division, Tasgaon, came to be confirmed.

2. The suit in question being Regular Civil Suit No.11 of 2015 has been filed by the Plaintiffs i.e. Respondent Nos.1 to 4 herein for permanent injunction restraining the Defendants i.e. Petitioners herein from interfering with their possession in respect of suit properties described in paragraph Nos.1A and 1B of the plaint. It was the case of the

Plaintiffs that the said suit properties are ancestral properties and that they are cultivating the same for the last 40 – 50 years. It is the case of the Plaintiffs that the Defendants using political pressure are making attempts to get their name mutated in the revenue record and have got a document executed from the Plaintiff No.4 i.e. Shankar Ramchandra Zambare about 40 years back. It is apprehending a threat from the Defendants as regards their dispossession that the Plaintiffs filed the suit in question. In the said suit, the Plaintiffs filed an application for temporary injunction numbered as Exh.5. The Defendants filed their Written Statement-cum-reply. It was their case that it is on the basis of the registered document executed on 21.05.1984 that they have title to the suit property and are in possession thereof. The Defendants in their Written Statement sought to give the reasons as to why they could not get their name mutated in the revenue record on the basis of the said document.

3. The Plaintiffs in respect of their assertion that they are in possession of the suit property relied upon the 7/12 extracts of the suit property for the preceding 30 years. The Defendants in support of their assertion relied upon the Sale Deed as also the affidavits of villagers, the affidavit of the persons who provide Tractor and Bullocks to the villagers on rent basis. The Trial Court considered the said application for temporary injunction filed by the Plaintiffs and has by its order dated

20.04.2015 allowed the same. The Trial Court primarily relied upon the mutation entry appearing in favour of the Plaintiffs for the last 30 years. The Trial Court in so far as the Sale Deed on which reliance was placed by the Defendants is concerned, observed that it defies logic as to why the Defendants did not get their name mutated for the past 30 years though the Sale Deed is dated 21.05.1984. The Trial Court therefore held that it is the Plaintiffs who are in possession of the suit property.

4. The Defendants aggrieved by the order dated 20.04.2015 passed by the Trial Court allowing the application for temporary injunction filed Misc. Civil Appeal No.52 of 2015. The Lower Appellate Court on a re-appreciation of the material on record did not deem it appropriate to interfere with the order passed by the Trial Court and especially having regard to the fact that there was an uninterpreted entry in favour of the Plaintiffs for the last 30 years in the 7/12 extracts. The Lower Appellate Court has accordingly dismissed the Appeal by the impugned order dated 24.08.2015.

5. The Learned Counsel for the Petitioners Mr. A. M. Kulkarni, would strenuously contend that though the effect to the Sale Deed was not given in the revenue record, the Defendants have been put in possession pursuant to the Sale Deed which fact the Learned Counsel sought to

buttress by relying upon the statement made by the Plaintiff No.4 before the Revenue Authority on 17.01.2015 whilst recording the name of the Defendants in the revenue record. The Learned Counsel would also seek to place reliance on the affidavits of the villagers as also the persons who provide Tractor and Bullocks on rent to the agriculturists in the village in support of the case of the Defendants that they are in possession. In my view, the said material can hardly rebut the presumption which arises in favour of the Plaintiffs on account of the entry made in 7/12 extracts in their favour.

6. No doubt, the Plaintiff No.4 in his statement recorded before the Revenue Authority on 17.01.2015 has accepted the execution of the Sale Deed by him on 21.05.1984 in favour of the father of the Defendants and has stated that possession was handed over on the same day. This statement, in my view, can only be attributed to the covenants which are appearing in the Sale Deed where probably there is a covenant that possession has been handed over. In so far as the affidavits on which reliance has been placed on behalf of the Defendants is concerned, the said affidavits are post 24.12.2014 i.e. after the Defendants made an attempt to get their name mutated in the revenue record in respect of which mutation entry No.6161 has been effected, but is yet to be certified. A reading of the said affidavits does not disclose that the Defendants are

in long standing possession i.e. after the Sale Deed was executed in the year 1984. The veracity of the said statement in the affidavits would have to be gone into at the trial of the Suit. However, for the purposes of the grant of temporary injunction as indicated above, the presumption which arises on account of the 7/12 extracts in favour of the Plaintiffs, in my view, is not rebutted by cogent material produced by the Defendants. In that view of the matter, no case for interference in the Writ Jurisdiction of this Court with the concurrent orders passed by the Courts below is made out. The Writ Petition is accordingly dismissed.

7. Needless to state that the observations made in the instant order and the impugned order are only for the purposes of consideration of the application for temporary injunction. The suit would undoubtedly be tried on its own merits and in accordance with law.

[R.M. SAVANT, J]

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment/Order.