

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10908 OF 2014**

Tukaram Aananda Patil & Ors.

..Petitioners

Vs.

Shamrao Ravaji @ Raosaheb Patil & Ors

..Respondents

Mr. V. V. Pai a/w Mr. R. N. Kachave for the Petitioners

Mr. M. S. Lagu for the Respondent Nos.1 to 3

CORAM : R. M. SAVANT, J.

DATE : 27th OCTOBER, 2015

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 9-10-2014 passed by the Learned Adhoc District Judge-5, Kolhapur, by which order, the Appeal filed by the Petitioners herein came to be dismissed and resultantlly the order dated 21-3-2014 passed by the Trial Court i.e. the Learned Civil Judge Junior Division, Gargoti, rejecting the application Exhibit 5 came to be confirmed. Hence both the courts below have concurrently held that the Plaintiffs i.e. the Petitioners herein are not entitled to the discretionary relief of temporary injunction.

2 The Suit in question being Regular Civil Suit No.47 of 2013 was filed by the Plaintiffs for perpetual injunction. The Suit property is land bearing Gat No.40-A admeasuring 16 H 55 R with Pot Kharaba 4 R of village Mathgav Tal Bhudargad. It is an undisputed position that the said land belongs to one

Shree Kshatra Jagatguru Mouni Maharaj which is a public trust. The said land was being cultivated by the common ancestor of the Plaintiffs and the Defendants one Ananda Patil, along with other lands. It seems that the other lands except the suit property came to be partitioned amongst the 7 sons of Ananda Patil amongst whom was the father of the Defendants. The cause of action for filing the Suit by the Plaintiffs was that after the death of the said Ananda Patil the Defendants got their name mutated in the 7/12 extract of the said property by deleting the name of the said Ananda Patil by an order passed in RTS No.1/97/97 dated 28-1-1997 and that the Defendants restrained the Plaintiffs from enjoyment of the joint share in the suit property. Incidentally it was the case of the Plaintiffs that they were in possession and cultivation of 1/7th share in the suit property.

3 In the said Suit, the Plaintiffs filed an application for temporary injunction for restraining the Defendants from dispossessing the Plaintiffs from the suit property. The Defendants filed their Written Statement in the Suit as also reply to the application for temporary injunction. It was the case of the Defendants that since the suit land is a trust property, it is not governed by the Tenancy Act and the trust allows only cultivation from year to year basis by executing a Kabulayat on receiving certain consideration. It was the case of the Defendants that the said Ananda Patil had never accepted the suit land for cultivation on behalf of the joint family. It was their case that the father of the

Defendants Ravji had applied for recording his name in the 7/12 extract in the crop inspection column which was recorded by order dated 24-1-1997. It was the case of the Defendants that the said order was not challenged by the Plaintiffs. It was further their case that the said Ravji had paid an annual fund to the trust and the trust had also executed a Kabulayat in name of Ravji only. It was further their case that after the death of the said Ravji, the Kabulayat came to be executed in the name of the Defendant No.1 in the year 2012-13 for the entire area of the suit land and as such, the Defendants are in exclusive possession of the entire suit land. It was also the case of the Defendants that the Plaintiffs have never challenged the Kabulayat executed in the name of Ravji exclusively by the trust and therefore on the said basis prayed for rejection of the application for temporary injunction. Before the Trial Court the Defendants relied upon the 7/12 and 8A extract wherein the name of their father Ravji was entered into in the year 1996 after the death of the said Ananda Patil and thereafter the names of the Defendants, which was right up to the date of filing of the Suit. The Defendants also relied upon the Kabulayat which was executed by the trust in question in favour of the Defendant No.1 for the entire land pursuant to which the Defendants are cultivating the land. On behalf of the Plaintiffs reliance was sought to be placed on an order passed by the Tahsildar in respect of the crop inspection wherein a reference has been made in respect of joint possession. Pertinently the Plaintiffs did not produced any material to indicate that on the date of the filing of the Suit they were in

possession of the suit land.

3 The Trial Court considered the said application for temporary injunction and having regard to the fact that the Kabulayat was executed in favour of the father of the Defendants Ravji and thereafter in favour of the Defendant No.1 up to the year 2012-2013 as also having regard to the fact that in the 7/12 extract the name of the said Ravji and thereafter the Defendants, was appearing from the year 1995 to the year 2013, came to a conclusion that it is the Defendants who are in possession of the suit property and that the Plaintiffs have failed to prove their possession. The Trial Court also observed that even accepting the case of the Plaintiffs that they are in joint possession, still they would not be entitled to an injunction against a co-owner. However, as indicated above, the Trial Court on the basis of the material on record accepted that the case of the Defendants was more plausible than the case of the Plaintiffs that they were in possession. The Trial Court accordingly by its order dated 21-3-2014 rejected the application for temporary injunction.

4 The Plaintiffs aggrieved by the said order dated 21-3-2014 passed by the Trial Court rejecting the application for temporary injunction carried the matter in Appeal. The Lower Appellate Court went threadbare into the material which was produced on behalf of the parties. The Lower Appellate Court did not deem it fit to give weightage to the order passed by the Tahsildar in respect

of the proceedings relating to crop inspection as the Lower Appellate Court was of the view that the order passed by the revenue authority would not bind the Civil Court whilst adjudicating the rights between two competing parties. The Lower Appellate Court was of the view that the Tahsildar whilst exercising the powers under the Tenancy Act or the Maharashtra Land Revenue Code did not have the right to adjudicate as between two competing claims. The Lower Appellate Court has adverted to the continuous appearance of the name of the father of the Defendants and thereafter the Defendant No.1 in the 7/12 extract as also the Kabulayat which was executed by the trust in favour of the father of the Defendants, Ravji and thereafter the Defendants till the year 2012-2013. Though before the Lower Appellate Court the order passed by the Trial Court recording that the Plaintiff are in joint possession was sought to be relied upon. The Lower Appellate Court observed that the said observation would not impact the final decision as the Trial Court has ultimately rejected the application for temporary injunction filed by the Plaintiffs. As indicated above the Lower Appellate Court has dismissed the Appeal by the impugned order dated 9-10-2014.

5 The Learned Counsel for the Petitioners Mr. Pai sought to contend that the courts below have laid undue emphasis on the entries made in the 7/12 extract as also in the 8A extracts. It was the submission of the Learned Counsel for the Petitioners that the said entries could not be relied upon by the

Defendants to claim title to the land in question.

6 In the instant case, the question is not whether the Defendants have title to the land in question. The question is as to who was in possession on the date when the suit was filed. The mutation entries in the 7/12 extract, as is well settled, raise a presumption of a party being in possession. The said presumption can be rebutted only by cogent material that is required to be produced by the other side. In the instant case there is hardly any material worth the name produced by the Plaintiffs to claim that they were in possession of the suit property on the date when the Suit was filed, which burden they had to undoubtedly discharge whilst claiming the relief of temporary injunction, which they have failed to do. Hence no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]