

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

WRIT PETITION NO. 5164 OF 2015

Shri Daulat Daji Jadhav

Petitioner

Vs

1.Shri Nathuram Mahadu
Talvatkar and Ors

.. Respondents

Mr. Vivek V. Salunke , Advocate for the petitioner.

CORAM :	R.G.KETKAR,J.
RESERVED ON :	09/07/2015
PRONOUNCED ON :	04/08/2015

PC:

1. Heard Mr. Vivek Salunkhe, learned counsel for the petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, original defendant no.1 has challenged the Judgment and order dated 22.7.2014 passed by the learned Civil Judge, Jr. Dn., Mangaon below Exhibit-5 in Regular Civil Suit NO.191 of 2013 as also the Judgment and order dated 4.3.2015 passed by the learned District Judge, Mangaon in Civil Misc. Appeal No.3 of 2015. By these orders, the Courts below allowed the application filed by respondents no.1 to 3, hereinafter referred to as 'plaintiffs', and issued temporary injunction restraining defendants no. 1 to 6 from causing obstruction to their possession over the suit property, more particularly mentioned in paragraph 1 of Plaint.

3. In support of this Petition, Mr. Salunke reiterated the submissions that were advanced before the Courts below. He submitted that in the facts and circumstances of the present case and in view of the material on record, the Courts below ought to have rejected the application for temporary injunction. He submitted that the material on record clearly indicates that defendant no.1 is in possession of the suit property. The record of right in respect of the suit property right from 1996 clearly shows that it is defendant no.1 who is in possession of the suit property. The extract of consolidation scheme falsifies the case of the plaintiffs. The Mutation Entry No.300/577 as well as receipts of payment of property tax clearly supports the case of defendant no.1 that he is in possession of the suit property.

4. I have considered the submissions advanced by Mr Salunke. I have also perused the material on record. The Courts below after considering the material on record have prima facie held that the plaintiffs have established their possession in the suit property. The Courts below also held that the plaintiffs have made out prima facie case; that balance of convenience lies in their favour and that irreparable loss and hardship will be caused to them in case injunction is not granted. In particular, the learned District Judge observed in paragraph 21 that in the column of 'possession and cultivation', the names of the plaintiffs' predecessor-in-title Madhav Talvatkar was entered on

29.10.1956 and accordingly Mutation Entry No. 577 was certified. It clearly shows that the plaintiff's predecessor-in-title Mahadu Talvatkar was in actual possession right from 1956. In paragraph 22, the learned District Judge observed that defendant no.1 has not brought on record any material to indicate how Mahadu Talvatkar gave possession to him. In fact, defendant no.1 contended that the plaintiffs are not concerned with the suit property. In paragraph 23, learned district Judge observed that the defendants did not challenge Mutation Entry no.577 certified on 29.10.1956. The learned District Judge also held that the learned trial Judge did not commit any error in exercising discretion while allowing the application Exhibit-5.

5. In view thereof, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

(R.G.KETKAR, J.)