

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5657 OF 2015**

Hanuman Nago Harad

..Petitioner

Vs

Shri Balu Kanhu Gurude and Ors

.. Respondents

Mr.Rajiv Patil, Senior Advocate i/b Onkar Warange, Advocate for
Petitioner.

CORAM : R.G.KETKAR,J.

DATE : 21/11/2015

PC:

1. Heard Mr. Rajiv Patil, learned senior counsel for the petitioner at length.
2. By this petition under Article 227 of the Constitution of India, original plaintiff has challenged the Judgment and order dated 2.8.2014 passed by the learned Civil Judge, Jr. Dn. Shahapur, below Exhibit 5 in Regular Civil Suit no. 71 of 2014 as also the judgment and order passed by the learned District Judge-2, Kalyan in Misc. Civil Appeal No. 65 of 2014. By these orders, the Courts below rejected the application made by the petitioner for injunction restraining the defendants from obstructing the plaintiff from carrying out agricultural activities over the lands, bearing Gat no.43 and Gat no.66, situate at village Koshimbade, Tal Shahapur, District Thane, (for short, 'suit lands')as also from obstructing the plaintiff's possession over the

suit lands and from taking forcible possession from the plaintiff.

3. In support of this petition, Mr. Patil submitted that survey no.81/3 was converted into Gat no.43 and Survey no.86/2 was converted into Gat no.66. On 15.7.2010, the plaintiff had purchased the suit lands from Shri Shantaram Shiva Patil for a valuable consideration of Rs. 8 lacs. In pursuance thereof Mutation Entry no.129 was made in favour of the plaintiff and since then the plaintiff is in actual possession of the suit lands. In 2011, T.I.L.R. also demarcated the suit lands. As against this, one Balu Kanhu Gurude instituted Regular Civil Suit No.52 of 2010 on 7.7.2010 against (1) Shantaram Shiva Patil, (2) Sanjay Shantaram Patil and (3) Raja Shantaram Patil. Initially, present plaintiff was not impleaded in the suit. On 7.4.2011, said Balu Gurude filed application for his impleadment as party defendant. That application was allowed on 29.9.2011. However, the plaintiff added as defendant no.4, was served with suit summons only on 31.1.2014. The said Balu Gurude thereafter amended the plaint praying for declaration that the sale deed dated 15.7.2010 executed by Shantam Patil in favour of the plaintiff is null, void and illegal and is not binding on him.

4. Mr. Patil submitted that one Ziprya Raoji Gurude was tenant in respect of the suit lands. He submitted that panchanama dated 11.2.1971 recorded that said Ziprya had died 3-4 years back

leaving behind no legal heir. The suit lands are cultivated by landlord Shantaram Patil personally. The order dated 26.4.1958 passed by A.L.T. recorded that at the relevant time, landlord Shantaram Patil was minor and, therefore, tillers' day was postponed to 1.10.1967 on which date the minor landlord Shantaram Patil will attain majority. After the landlord attained majority, 32G proceedings were continued and after considering the panchanama dated 11.2.1971, the A.L.T observed that from the report of the Talathi and the panchanama, tenant Ziprya Gurude is dead and the landlord Shantaram Patil is cultivating the suit lands personally. Since the tenant is dead, it is necessary to make proper heirship inquiry. Talathi was directed to correct village record after making proper heirship enquiry and the proceedings under section 32G should be dropped.

5. Relying upon the panchanama dated 11.2.1971 as also the order of the A.L.T. dated 12.4.1971, Mr Patil submitted that tenant Ziprya Gurude died leaving behind no legal representative. After the death of tenant, landlord Shantaram Patil was cultivating the suit lands. The plaintiff has purchased the suit lands from Shantaram Patil on 15.7.2010 and since then he is in possession. In view thereof, the Courts below committed serious error in holding that the plaintiff is not in possession of the suit lands. He further relied upon Section 10 of CPC to

contend that at the time of instituting the suit by the plaintiff, there was no lis between him and the defendant.

6. I have considered the submissions advanced by Mr. Patil. I have also perused the material on record. In particular, the learned District Judge has considered 7/12 Extracts in respect of Survey no.86/2 (Gat No.66) from 1956-57 to 1975-76 and observed that name of Ziprya Raoji is shown in the column of 'Kul and Khand'. Thereafter, name of Kanu Lahanu is shown for the years 1976 to 1979. As far as 7/12 Extracts in respect of Survey no.81/3 (Gat no.43) are concerned, from 1954 to 1961 and 1971 to 1975 name of Ziprya Raoji was shown in the column of 'Kul and Khand'. Thereafter, name of Lahanu Gurude is shown for the years 1975-1978. Thereafter, name of Kanu Lahanu is shown for the years 1978 to 1980.

7. In paragraph 10, the learned trial Judge considered the Mutation Entry no.148 dated 11.1.1994 which recorded that Shantram Patil is the landlord of the suit lands and Zipraya Raoji Gurude is shown as tenant. It was further observed that the plaintiff came with the case that the name of Ziprya Raoji was deleted as tenant by order dated 12.7.1971 which was certified on 27.5.1974 to that effect.

8. With the assistance of Mr Patil, I have perused 7/12 Extracts of Gat nos. 66 and 43 and I do not find that the

observations made by the learned District Judge in paragraphs 9 and 10 are contrary to the 7/12 Extracts. Panchama dated 11.2.1971 and the order dated 12.4.1971 will not extinguish the tenancy rights of the Ziprya Raoji as prima facie he was tenant as on 1.4.1957. If that be so, prima facie Zipra Raoji became the statutory purchaser of the suit lands under section 32G. Once it is evident that Ziprya Raoji was tenant as on 1.4.1957, he became deemed purchaser of the suit lands. Understood thus, as also having regard to 7/12 Extracts of the suit lands which records the name of Ziprya Raoji and after his death, his legal representatives, it cannot be said that the plaintiff is in possession of the suit lands. No material is produced on record to substantiate that 32G proceedings were ultimately dropped in pursuance of the order dated 12.4.1971. If that be so, then prima facie Shantaram Patil could not have conveyed title in favour of the plaintiff as he himself was divested of title as on 1.4.1957.

9. In view thereof as also having regard the fact that the courts below have concurrently found that the plaintiff is not in possession of the suit lands, no case is made out for invocation of powers under Article 227 of the Constitution of India. It cannot be said that the findings recorded by the courts below are perverse, being based on no material or that they are contrary to the

material on record. The Petition fails and the same is dismissed. It is expressly made clear that the observations made herein are tentative and prima facie and are made only for the purpose of considering correctness of the impugned orders. The learned trial Judge will decide the suit on the basis of evidence on record and on its own merits in accordance with law uninfluenced by the observations made in the impugned orders and in this order. Liberty is reserved to the plaintiff to apply for deciding the suit in a time bound manner. If such application is taken out, the learned trial Judge will pass appropriate orders thereon. Order accordingly.

(R.G.KETKAR, J.)