

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

WRIT PETITION NO.5301 OF 2015

Kaka Khandu Shedge and Anr.. ..Petitioners

Vs

Mahadeo Dattu Shinde and Ors. .. Respondents

Mr. Kuldeep U. Nikam, Advocate for Petitioners.
Mr. Mahindra B. Deshmukh, Advocate for Respondents.

CORAM : R.G.KETKAR,J.
DATE : 18/06/2015

PC:

1. Heard Mr. Kuldeep Nikam, learned counsel for the petitioners and Mr. Mahindra Deshmukh, learned counsel for the respondents at length.
2. By this Petition under Article 227 of the Constitution of India, original defendants have challenged the Judgment and order dated 19.10.2011 passed by learned 2nd Jt. Civil Judge, Jr. Dn, Vita, below Exhibit-5 in R.C.S. No.72 of 2009 as also the Judgment and order dated 9.4.2015 passed by the learned District Judge-3, Singli in Misc. Civil Appeal No.197 of 2011. By these orders, the Courts below allowed the application taken out by the plaintiffs and issued injunction restraining defendants no.1 to 4 from interfering into peaceful possession of the property of the plaintiff, more particularly described in paragraph 8 of the

Plaint till final decision of the suit.

3. In support of this Petition, Mr. Nikam strenuously contended that by registered sale deed dated 4.5.1953, the petitioners purchased 4 Anna share out of revision survey no.126/17 for a valuable consideration of Rs.250/-. In pursuance of that sale deed, mutation entry no.11620 was certified on 24.4.1955 recording therein that the petitioners have purchased undivided 4 Anna share in the property in question. He submitted that the mutation entry no.11620 was in force till the plaintiffs belatedly challenged it before the revenue authorities. The mutation entry was corrected by Sub Divisional Officer on 10.11.2008. Mutation Entry no.11620 was cancelled. He submitted that the learned District Judge considered order of the Sub Divisional Officer. However, the learned District Judge failed to notice that the said order was set aside by the Collector.

4. He further submitted that perusal of the sale deed and the description clearly shows that the petitioners had purchased 4 Anna out of revision survey no.126/17 by registered sale deed dated 4.5.1953. He submitted that sign '6' represents Anna and not Guntha. This is evident from perusal of the sale deed and in particular pages 17, 18, 19. On page 17, Stamp Paper purchased was for 2 Rs. 8 Anna. The sign '6' represents 'Anna'. This is also reinforced from perusal of page 18, where Stamp Paper of Re.1

and 8 Annas was purchased. This was also reiterated from perusal of page 19, where Stamp Paper of 4 Annas was purchased and the sign '6' is mentioned. He, therefore, submitted that the Courts below committed serious error in interpreting sign '6' as Guntha instead of 'Anna'. Mr. Nikam further submitted that the Courts below failed to appreciate that one co-sharer cannot claim injunction against other co-sharer.

5. On the other hand, Mr. Deshmukh submitted that sign '6' has to be construed with reference to context. Wherever amount is specified, the same sign is used for describing amount in terms of money as also area of the property. He, therefore, submitted that it will depend upon the context in which sign '6' is used. He further submitted that in case there is inconsistency between the sign and the words, the words will prevail. All along in the sale deed, area mentioned is 4 Gunthas. The parties never intended to execute sale deed in respect of 4 Annas. He further submitted that though the Collector has set aside the order dated 10.11.2008 of S.D.O, the plaintiffs have carried matter before Commissioner by filing revision and the Commissioner has ordered status-quo. He, therefore, submitted that no case is made out for interfering with the impugned order.

6. I have considered the rival submissions made by the learned counsel appearing for the parties. I have also perused

the material on record. As noted earlier, the Courts below have issued injunction. The only controversy between the parties is whether sign '6' mentioned in the sale deed represents 'Anna' or 'Guntha'. Mr. Nikam submitted that the area described in the sale deed represents 4 Annas and not 4 Gunthas. It is no doubt true that the sign 'Anna' represents amount in money as also the area. It will, therefore, depend upon the context in which that sign is used. Revision survey No.126/17 admeasures 1 Acre 38 Gunthas. Sign '6' is between 1 Acre and 38 Gunthas. As far as assessment is concerned, assessment is described as Re. 1 and 2 Annas. So depending upon the context, sign '6' is used. Perusal of sale deed and in particular page 17 shows that after undivided sign '6', in words the area purchased is described as 4 Gunthas. It is settled position in law that if there is any inconsistency between figures and words, the words will prevail. I, therefore, do not find that the Courts below committed any error in holding that the petitioners had purchased 4 Gunthas land from revision survey no.126/71 (Gat No.81) and not 4 Annas out of that property. Reliance placed by Mr. Nikam on mutation entry no.11620 prima facie does not advance his case because, in my opinion, mutation entry has to be consistent with the sale deed.

7. 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.

8. It is expressly made clear that observations made herein are tentative and prima facie. The learned trial Judge as also revenue authorities shall decide the proceedings uninfluenced by any observations made herein. Order accordingly.

(R.G.KETKAR, J.)