

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

WRIT PETITION NO.5400 OF 2015

Pradip Ramchandra Gharat

.. Petitioner

Versus

Heramb Ghananil Dharmadhikari

.. Respondent

Mr. A. J. Joshi, for the Petitioner.

Mr. R. D. Suryawanshi, for the Respondent.

CORAM : R.M. SAVANT, J.

DATE : 10th SEPTEMBER, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 30.04.2015 passed by the Learned District Judge-1, Palghar, by which order the Misc. Civil Appeal No.43 of 2014 filed on behalf of the private Trust known as “Shri. Laxmi Narayan Devasthan” came to be allowed and resultantly, the order dated 22.09.2014 passed by the Trial Court rejecting the application Exh.5 for temporary injunction by the Petitioner came to be set aside.

2. The suit in question has been filed for injunction restraining the Petitioner herein i.e. Defendant in the suit from interfering with the possession of the lands owned by the Plaintiff being Gat Nos.46/4, 47/1,

47/3, 47/5 and 53/6 of village Dahisar Tarfe Tarapur, Taluka and District Palghar. The Plaintiff claims to be the owner of the lands in question and the cause for filing the suit arose when the Defendant i.e. the Petitioner herein obstructed the measurement of the lands being carried out. In the said suit, the Plaintiff filed an application for temporary injunction. The Defendant i.e. the Petitioner herein filed Written Statement-cum-reply to the said application for temporary injunction. The stand taken in the Written Statement was that the ancestors of the Defendant were in cultivation of the lands in question and on 01.04.1957 the father of the Petitioner was cultivating the lands. As a result of which an entry came to be made in revenue record in his favour of being a protected tenant. It appears that the said entry was made on the basis of "Nokarnama" which was executed in the year 1956 under which the father of the Petitioner was cultivating the lands in question and was growing various crops. It seems that the said mutation entry made in favour of the father of the Petitioner as a protected tenant was deleted in the year 1966 pursuant to the Vardi application which was made and which was supported by the statement made by the father of the Petitioner that he has surrendered the lands in question and that the lands are of the ownership of the plaintiff Trust. Hence, right from the year 1966 the name of the ancestors of the Petitioner or the Petitioner was not appearing in the revenue record. The

Trial Court considered the said application for temporary injunction and rejected the same by its order dated 22.09.2014 and the principal ground on which the application was rejected was that the father of the Petitioner i.e. Defendant was a protected tenant as he was in cultivation on the appointed day i.e. on 01.04.1957. The Trial Court held that in view of the fact that the father of the Defendant was in possession on the appointed day, he was a protected tenant within the meaning of the said Act. The Trial Court thereafter did not go into the aspect as to who is in possession on the date when the suit was filed, but as indicated above principally relying upon the fact that on 01.04.1957 the father of the Defendant was in possession held that the possession of the Defendant would have to be protected and the grant of injunction to the Plaintiff in the suit in question would jeopardise the same. The Trial Court as indicated above accordingly by its order dated 22.09.2014 rejected the said application.

3. The aggrieved Plaintiff carried the matter by way of an Appeal being Misc. Civil Appeal No.43 of 2014. The Lower Appellate Court has by the impugned order allowed the Appeal and set aside the order dated 22.09.2014 rejecting the application for temporary injunction. The Lower Appellate Court has observed that the Trial Court had erred in entering the arena which is reserved for the revenue authorities, as declaration has been issued by the Trial Court that the Defendant is a protected tenant.

What has weighed with the Lower Appellate Court is the fact that the revenue entry made in favour of the father of the Defendant was deleted vide mutation entry No.724 in the year 1966 and till this date, no exception has been taken to the said deletion by the father of the Petitioner or the Defendant. The Lower Appellate Court held that right from 1966 the entry in the revenue record is in the name of the Plaintiff. The Lower Appellate Court has also observed that the Defendant has not produced any contemporaneous material to indicate that he is in possession and having regard to the fact that the Plaintiff is admittedly the owner of the lands in question, presumption would have to be drawn that the Plaintiff Trust is in possession of the land in question. The Lower Appellate Court has therefore for cogent reasons upset the order passed by the Trial Court rejecting the application filed by the Plaintiff for temporary injunction. The Lower Appellate Court as can be seen from its impugned order has considered the findings recorded by the Trial Court and on such consideration the Lower Appellate Court has come to a conclusion that the Trial Court has proceeded on an erroneous premise by entering into the arena meant for the revenue authorities.

4. The Learned Counsel appearing for the Petitioner i.e. the original Defendant would seek to reiterate the case of the Defendant before the Courts below. The Learned Counsel sought to emphasis the fact

that the Defendant's father was a protected tenant and was in cultivation on 01.04.1957. The Learned Counsel would also seek to place reliance on some document which was prepared at the time of measurement being carried out, which measurement was carried out at the behest of the Plaintiff, wherein it has been recorded that the measurement could not be carried out as the third party i.e. the Defendant is in occupation. In my view, the said material can hardly aid the Defendant to support his case that he is in possession on the day when the suit was filed. No doubt, an entry was made earlier that the father of the Defendant was a protected tenant but the facts which have intervened thereafter show that the said entry was deleted in the year 1966 and from then onwards till this day, the entry in the revenue record is that of the Plaintiff i.e. the Respondent. The Defendant i.e. the Petitioner herein has also not adopted any proceedings under the Bombay Tenancy and Agricultural Lands Act, 1948 for protecting his alleged rights. In my view, the Lower Appellate Court having upset the order passed by the Trial Court for cogent reasons, the interference of this Court in its Writ Jurisdiction is not warranted. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]

Certified to be true and correct copy of the original signed order.