

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 07 OF 2009

Sambhaji s/o. Dattatraya Kide,
Age. 40 years, through his G.P.A.
Shri. Digambar S/o Sambhaji Kide,
Age. 59 years, Occu. Pensioner
and Agri., R/o. Manaspuri,
Tq. Kandhar, Dist. Nanded.PETITIONER

Versus

1. State of Maharashtra,
through its Tahsildar at
Kandhar, Dist. Nanded.
2. Govind S/o. Laxman Kide (Died),
3. Bhaurao S/o. Govind Kide (Died),
4. Ishwar S/o. Govind Kide,
Age. Major, Occu. Agril,
R/o. Manaspuri, Tq. Kandhar,
Dist. Nanded.
5. Vithal S/o. Govind Kide,
Age. Major, Occu. Agril,
R/o. Manaspuri, Tq. Kandhar,
Dist. Nanded.
6. Madhav S/o. Govind Kide,
Age. Major, Occu. Agril,
R/o. Manaspuri, Tq. Kandhar,
Dist. Nanded.
7. Laxmikant S/o. Gangadhar Mukhedkar,
Age. Major, Occu. Profession,
R/o. Kandhar, Dist. Nanded.

8. Pundalik S/o. Govind Kide,
Age. 55 years, Occu. Agril.
R/o. Manaspuri, Tq. Kandhar,
Dist. Nanded.RESPONDENTS

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Advocate for Petitioner : Mr Deshmukh Arvind
APP for Respondents: Mr A R Kale
Advocate for Respondents : Mrs A N Ansari For R 7, Mr
A P Hande h/f A M Gaikwad For R No. 4 And 8.

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CORAM : V.K. JADHAV, J.

Dated: October 26, 2016

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ORAL JUDGMENT :-

1. Being aggrieved by the order dated 31.7.1990 passed by the Executive Magistrate, Kandhar, initiating proceeding thereby under the provisions of Sec 145 of the Code of Criminal Procedure in respect of the land survey number 46 and 47 admeasuring 30R and 17R respectively situated at village Manaspuri, District Nanded in file No.79/A/MG/145/CRPS/8, the non-applicants therein preferred criminal revision no.158/1990 and the learned Additional Sessions Judge, Nanded by its judgment and order dated 4.9.1994 quashed and set aside the order of executive Magistrate, Kandhar and remanded the matter to the lower court with a direction to add necessary parties in the original proceedings and give added parties an

opportunity to file their say and permit both the sides to lead evidence in support of their rival contentions. It is to be mentioned here that, in the original proceedings started in the year 1990, the father of the present petitioner was not a party, however, in criminal revision no.158/1990, father of the petitioner namely Datta Sambhaji Kide also joined as a revisional petitioner alongwith other original non applicants.

2. After remand as aforesaid, the learned Executive Magistrate, Kandhar by order dated 31.5.1995 held that the disputed land was in the possession of Laxmikant Gangadhar Mukhedkar (respondent no.7 herein) alongwith Madhav Govind Kide (respondent No.6 herein). Being aggrieved by the same, one of the non-applicant namely Pundlik Govind Kide preferred criminal revision no.180/1995 and the learned Additional Sessions Judge, Nanded by judgment and order dated 22.10.2002 again remanded the matter to the Executive Magistrate for the reason that the Magistrate has not considered the evidence placed on record.

3. Thereafter, the learned Executive Magistrate by order dated 1.1.2003 held that, Laxmikant Gangadhar Mukhedkar (respondent No.7) herein is in possession of the disputed land survey no.46 admeasuring 0.30R and Survey No.47 admeasuring 0.17R situated at village Manaspuri, Tq. Kandhar, District Nanded. The learned Executive Magistrate has further directed the parties to approach the Civil Court in terms with their contentions about sale and purchase of aforesaid lands time to time. Being aggrieved by the same, one of the non-applicant Pundlik Govind Kide has preferred criminal revision no.55/2003 before the Adhoc Additional Sessions Judge, Kandhar, and the learned Adhoc Additional Sessions Judge, Kandhar by judgment and order dated 30.4.2008 dismissed the revision thereby confirming the order passed by the Executive Magistrate dated 1.1.2003. Hence, this writ petition.

4. The learned counsel for the petitioners submits that, in the original proceedings initiated in the year 1990 on the basis of report of the P.S.I. and by conducting preliminary inquiry, the possession of the

aforesaid disputed land was taken from the father of the petitioner's by Tahsildar and accordingly, the proceedings under section 145 came to be initiated thereafter. The learned counsel submits that, even though, possession of the aforesaid land was taken from the deceased father of the petitioners the learned Executive Magistrate by order dated 31.7.1990 erroneously held that one Laxmikant Gangadharrao and Madhavrao Govindrao (respondents No.6 and 7 herein) were in possession of the aforesaid disputed land and thus restored their possession. In a criminal revision No.158/1990 before the Sessions Court, Nanded the deceased father of the present petitioner joined as a revisional petitioner alongwith the other non-applicants and the Additional Sessions Judge, Nanded by order dated 4.9.1994 remanded the matter to the Executive Magistrate with a direction to add necessary parties in the original proceedings as already referred and give them an opportunity to file their say and also to lead their evidence. Learned counsel submits that, in paragraph no.6 of the said order the learned Additional Sessions Judge has observed that on 8.12.1978 one sale

deed was executed in favour of Datta Sambhaji (deceased father of the present petitioner) by the owner of survey no.46 and 47 namely Govinda, the possession of the property was also delivered in his favour and that till taking possession of the suit lands by the Government, it was in possession of the Datta Sambhaji. In the light of these observations, the learned Additional Sessions Judge, Nanded while deciding the Criminal Revision No.158/1990 observed that, Datta Sambhaji (deceased father of present petitioner) was necessary party to the proceedings and accordingly remanded the matter with directions as mentioned above. Learned counsel submits that, even thereafter, in the original proceedings before the Executive Magistrate, Kandhar, after remand, deceased father of the petitioners was not made as party and even after second remand, he was not made as party to the proceedings. Learned counsel submits that, on this ground alone, the matter is fit to be remanded to the Executive Magistrate again by setting aside the order after remand passed by the Executive Magistrate dated 1.1.2003 and confirmed by the Adhoc Additional

Sessions Judge, Kandhar by order 30.4.2008 in criminal revision no.55/2003.

5. None present for the respondents no.5 and 6.

6. Learned counsel for respondent no.7 submits that, after second remand, the learned Executive Magistrate has directed the parties to approach the Civil Court to establish their rights in terms of the sale and purchase of the disputed land time to time. The said order is also confirmed by the Adhoc Additional Sessions Judge, Kandhar by order dated 30.4.2008 in criminal revision no.55/2003. Learned counsel submits that, object and scope of section 145 of the Cr.P.C. is only to provide a speedy remand for the prevention of breach of peace arising out of disputes relating to immovable property by maintaining one or other of the parties in possession. The Executive Magistrate is not empowered to decide the title over the question of a valid possession of any of the parties over the disputed land. Learned counsel further submits that, so far as deceased father of the present petitioner namely Dattatraya Sambhaji is concerned, he

died on 9.6.1993 i.e. during the pendency of Criminal Revision No.158/1990. However, legal heirs i.e. present petitioner did not join themselves in the said criminal revision by substituting their deceased father. Even in the subsequent proceeding, they did not join as parties to pursue the contentions raised by their deceased father in the said Criminal Revision No.158/1990. Furthermore, even though, learned Magistrate by order dated 1.1.2003 held the possession of respondent Laxmikant Mukhedkar and respondent Madhav Govind Kide over the disputed land, the present petitioners did not prefer any revision and even did not bother to join said revision as a party. Even though learned Executive Magistrate in the order dated 1.1.2003 directed the parties to approach the Civil Court to establish their rights, the petitioners still this date have not approached the Civil Court. Learned counsel submits that, thus, there is no substance in the writ petition and writ petition is liable to be dismissed.

7. I have also heard the learned counsel for respondent Nos.4, 8 and learned APP for respondent

No.1 State.

8. So far as object and scope of Section 145 of the Code of Criminal Procedure is concerned, the Executive Magistrate is mainly concerned with the possession of the property in dispute on the date of the preliminary order and dispossession, if any, within two months prior to that date. It is well settled that, Executive Magistrate is not required to decide as to the title of the property or right of the possession of the same. Even though learned Executive Magistrate by order dated 1.1.2003 directed the parties to approach the Civil Court none of the parties approached the Civil Court and respondents No.6 and 7 herein are in possession of disputed land. Furthermore, even though deceased Datta Sambhaji (father of the present petitioner) had joined himself in Criminal Revision No.158/1990, he died during the pendency of said criminal revision, however, his legal heirs were not taken on record, nor the petitioner approached to the Executive Magistrate in the subsequent proceeding after second remand, which came to be disposed off by the learned Executive

Magistrate in the year 2003.

9. Under these circumstances, no purpose would be served by remanding the matter to the Executive Magistrate again when the petitioners slept over their right for years together and, did not bother to institute any civil suit to get their rights established.

10. In view of the above and in the facts and circumstances of the present case, I do not find any merit in this writ petition. Hence, order.

ORDER

- I. Writ Petition is hereby dismissed.
- II. Rule discharged.
- III. Writ Petition is accordingly disposed off.

sd/-
(**V.K. JADHAV, J.**)

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aaa/-