

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

WRIT PETITION NO. 7022 OF 2016

Gulashanbi Shaikh Faruq

..PETITIONER

VERSUS

Shaikh Nawab Shaikh Badhu and Others

..RESPONDENTS

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Mr. D.A. Mane, Advocate h/f Mr. D.M. Pingale, Advocate for petitioner.

Mr. A.S. Savale, Advocate for Respondent Nos. 1 to 4.

Mr. S.K. Tambe, A.G.P. for Respondent No.5.

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CORAM : T.V. NALAWADE, J.

DATED : 06th DECEMBER, 2016

ORDER :

1. The petition is filed to challenge the orders made on Exhibits 19 and 21 in Civil Appeal No. 12 of 2013 presently pending in the Court of Ad-hoc District Judge, Shahada. Both sides are heard.

2. The appeal is filed by present respondents to challenge the judgment and decree in which perpetual injunction is given in favour of present petitioner. Present petitioner is the cousin of respondents. The suit is filed by present petitioner for relief of perpetual injunction in respect of agricultural land. It is the case of the petitioner that the suit

property was owned by father of petitioner and her name was entered in place of her father in the revenue record and so she is entitled for perpetual injunction. The defendants contested the suit by contending that the suit property was jointly owned by father of plaintiff and father of defendants.

3. During pendency of the appeal, application was moved by present respondents – original defendants before the revenue authority for making correction in the mutation entry made in favour of plaintiff. Application at Exhibit 21 was moved to prevent the revenue authority from proceeding ahead with enquiry. When suit was filed only for relief of permanent injunction, question of title was not involved. Revenue authority could not have been prevented by the Civil Court from making such enquiry. Thus, application at Exhibit 21 itself was misconceived and the District Judge has not committed any error in rejecting application at Exhibit 21.

4. Application at Exhibit 19 was moved by respondent for permission to produce documentary evidence under provision of Order 41 Rule 27 of the Code of Civil Procedure. The record like 7/12 extract of the suit property for the year 1953-54 to 1995-96 and Mutation Entry No.

24, 193 and 211 are to be produced as additional evidence. The District Judge has allowed this application as this record is with regard to the suit property. The submissions made show that in the year 1953-54, names of both fathers of plaintiff and defendants were shown in the revenue record and they were shown as joint owners of the suit property. If defendants/appellants of the appeal are able to prove that they are joint owners, it will be difficult for the Court to give injunction in favour of the plaintiff. This record is relevant in view of Order 41 Rule 27 of the Code of Civil Procedure for deciding the matter properly.

5. This Court sees no reason to interfere in the orders made by the Appellate Court. Petition stands dismissed.

(T.V. NALAWADE, J.)

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