

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

971 WP/8810/2016 WITH CA/13485/2016

RAMKISHAN MOHAN SURYAWANSHI
VERSUS
GYANNOBA HULAJI SURYAWANSHI AND OTHERS

...
Advocate for petitioner : J.M. Murkute
Advocate for respondents : Jain Vishwajit R (Kamboj)
...

CORAM : T.V. NALAWADE, J.
DATED : 14th October, 2016.

ORDER :

1. The petition is filed to challenge the order made on Exh. 5 in Regular Civil Suit No. 481/2015, which is presently pending in the Court of Civil Judge, Junior Division, Udgir and also the decision of Misc. Civil Appeal No. 11/2016, which was pending in the Court of Additional District Judge, Udgir. Both the sides are heard.

2. The suit is filed by present petitioner for relief of declaration of ownership and for mandatory and perpetual injunction. It is in respect of land Survey No. 19/A/1, having area of 2 H. 30 R. It is the case of plaintiff that under two separate sale deeds of 1988 and 1992 he purchased two portions each time 1 H. 15 R. from the defendants and so, he has become owner under sale deeds of suit property. It is the case of plaintiff

that by mistake the property was described as 18/A/1 in stead of 19/A/1. It is the case of plaintiff that the boundaries of the property purchased by him are however correctly shown in the sale deed and so, he has become owner of 19/A/1. The defendants have contested the suit and it is the case of defendants that property bearing No. 18/A/1 is sold and no portion of property bearing No. 19/A/1 was sold.

3. The Trial Court rejected the application filed for relief of temporary injunction and this decision is confirmed by the District Court in Misc. Civil Appeal. As the property is required to be sold under registered sale deed and the number describes the property, at present no fault can be found with the orders made by the two Courts below. The plaintiff will be entitled to get the decision in respect of the aforesaid contentions on merits. But, at present there is no possibility of interference in the concurrent findings given by the Courts and the decisions are based on use of discretion and the aforesaid circumstances.

4. To take care of the interest of the plaintiff, petitioner some order can be made. If the Court Commissioner is appointed to supervise the harvesting of the crop, that will serve the purpose as on record the defendants are shown as owners. The

learned counsels for both the sides suggested the name of one Advocate Shri. Devarjan Bhujangrao Bhale from Udgir as Court Commissioner. Under his supervision, the defendants may harvest the crop and sell it to or in the Marketing Federation. The receipts or copies of the receipts are to be collected by the Court Commissioner to ascertain the price received. The defendants will be entitled to take the amount, but they will be required to give undertaking to the Trial Court that if the plaintiff succeeds in the suit, the defendants will be depositing the entire amount with interest at the rate of 9% p.a. Only after giving of such undertaking the crop is to be harvested. The amount of Rs. 6000/- (Rupees six thousand) is to be deposited by the plaintiff in the Court as fees of Court Commissioner. The suit is to be disposed of expeditiously and in any case, within six months from the date of the receipt of this order.

5. With these directions and observations, the petition is disposed of. Civil Application is disposed of.

Authenticated copy allowed.

[T.V. NALAWADE, J.]

ssc/