

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 1150 OF 2016

SHRI. RAJESH GURUDAS GAUDE @
RAJESH GURUDAS KAVLEKAR AND ANR., ... Petitioners
Versus
SHRI. TUKARAM BHIKU KAVLEKAR AND 3
ORS., ... Respondents

Mr. Joaquim Godinho, Advocate for the petitioners.

Coram:- F. M. REIS, J.

Date:- 16th December, 2016

P.C.

Heard Mr. J. Godinho, learned counsel appearing for the petitioners.

2. The challenge in the above petition is to the orders passed by the Courts below whereby the learned Trial Judge has granted an injunction as prayed for by the plaintiff/respondents in the suit.

3. Mr. Godinho, learned counsel appearing for the petitioners submits that the petitioners are tenants of the subject property and as such as the petitioners are in possession of the property, the question of granting an injunction in favour of the respondents would not be justified. The learned counsel further pointed out that the petitioners have initiated proceedings before

the Competent Court to get a declaration of tenancy in favour of the petitioners. It is further pointed out that as the petitioners are in possession of the subject property, the question of granting any injunction against the petitioners is totally unjustified. It is further submitted that the findings in the present proceedings would influence the authorities while deciding the application filed by the petitioners for declaring themselves as tenants. The learned counsel as such points out that the impugned orders be quashed and set aside.

4. I have considered the submissions of the learned counsel appearing for the petitioners and I have also gone through the records. It is undisputed that the subject matter of the property is the property surveyed under No.119/2 of Village Cundaim. The Courts below have also taken note of the fact that the duly promulgated survey records stand in the name of the predecessor in title of the respondents herein and subsequent to its purchase, the mutation has been carried out in favour of the respondents. The presumption under Section 105 of the Land Revenue Code has not been rebutted by the petitioners by any cogent material on record. In such circumstances, such findings arrived at by the Courts below cannot be interfered by this Court in Writ Petition under Article 227 of the Constitution of India when there is no perversity or irregularity in such findings. The order impugned is within the discretion of the learned Trial Judge, I find that there

is no irregularity or arbitrariness in exercise of such discretion by the Courts below in favour of the respondents herein.

5. As far as the contention of Mr. Godinho, learned counsel appearing for the petitioners that the findings in the present proceedings may come in the way of the petitioners at the time of obtaining a relief sought before the Competent Court under the Agricultural Tenancy Act, I find that the findings herein are prima facie findings for the purpose of deciding an application for temporary injunction. As such the contention of Mr. Godinho, learned counsel to that effect cannot be accepted. The learned Judge shall decide the suit or proceedings on its own merits in accordance with law.

6. In view of the above, I find no merit in the above petition which stands accordingly rejected.

F. M. REIS, J.

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