

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition NO. 1014 OF 2016

SHRI. SAKHARAM MHADU CHAUGULE
AND ANR.

...Petitioners

Versus

BABAN @ LAXMAN BHAU YADAV (DECD)
1a. SMT. ANANDI BABAN YADAV & ORS.

...Respondents

....

Ms. Mangal B. Kadam, Advocate for the Petitioners.

....

CORAM : R. G. KETKAR, J.

DATE : 23rd MARCH, 2016

P.C.

1. Heard Ms. Mangal Kadam, learned Counsel for the petitioners, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the Judgment and order dated 3.11.2015 passed by the learned Adhoc District Judge-2 Kolhapur in Misc. Civil Appeal No.113 of 2012. By that order, the learned District Judge allowed the appeal preferred by respondents no. 1 to 3-plaintiffs and set aside the trial Court's order rejecting the application for temporary injunction. The learned District Judge allowed the application and issued

injunction restraining the defendants from obstructing plaintiffs possession in the suit lands till disposal of the suit.

3. Ms.Kadam submitted that respondent no1. Baban Yadav claimed to be adopted son of one Bhau Yadav. Original owner of the suit land was one Jivba Yadav who died leaving behind two sons Bhau and Rau. Bhau had no issue. Rau had three daughters and the plaintiff and defendant no.1 are children of one of the daughters of Hausabai. Plaintiff Baban claimed to have gone in adoption by Bhau. However, he did not produce deed of adoption. The plaintiff and defendant no.1 are jointly in possession. Defendant no.1 had supplied sugarcane crop to Vishwasrao Naik Sahakari Sakhar Karkhana Ltd, Yashwantnagar, Tq. Shirala, District-Sangli. She submitted that sugarcane crop cultivated by defendant no.1 is in the suit lands and it is likely that the plaintiff may harvest sugarcane crop among other crops.

4. Ms. Kadam strenuously contended that the learned trial Judge, after considering the material on record rejected the application made by the plaintiff. She submitted that Jiva Yadav died leaving behind two sons Bhau and Rau. Bhau had

no issues. Rau had three daughters, namely, (1) Hausabai, (2) Kamlabai and (3) Tanhubai. The plaintiff and defendant No.1 are sons of Hausabai. She submitted that in mutation entry No.73 the name of Baban (plaintiff) along with others was recorded. Name of Baban was recorded as Manager of the joint family. She also invited my attention to the suit properties which includes Gat No.1291 and para-14 of the appellate Court judgment. In para-14 of the appellate Court judgment, the learned District Judge considered that extract of sugar cane crop issued by Vishwasrao Naik Sugar Factory, Yashwantnagar, Taluka-Shiral, District-Sangli for the year 2010-2012, as also receipt of sugar factory for the year 2010-2011. The learned District Judge observed that on receipt gat number is not mentioned. The learned District Judge also noted that while making entry of sugarcane with sugar factory, gat No.1291 was mentioned. Defendant No.2 is neither owner of gat No.1291 nor she is in possession of it and the sugar factory has mentioned gat number due to information given by the defendants.

5. Ms. Kadam submitted that the plaintiff and defendant No.1 are in joint possession of the suit properties. The plaintiff

cannot claim to be the exclusive owner of the suit properties and at the highest the plaintiff can claim share of Bhau. At the same time, the defendants being successors of Rau are entitled to half share in the suit property. In other words, the plaintiff being co-sharer cannot claim injunction preventing other co-sharers from enjoying the suit properties.

6. I have considered the submissions advanced by Ms. Kadam. I have also perused the material on record. As noted earlier, the trial Court rejected the application mainly on the ground that the plaintiff claimed to have been adopted by Bhau Jivba Yadav, but, he did not produce the adoption deed. As against this, in paragraph-12 the learned District Judge considered 7/12 extracts as also mutation entry No.73. Mutation entry No.73 recorded name of the plaintiff along with other sharers. Learned District Judge also noted that the mutation entry No.73 was not challenged by the defendants till date. The plaintiff is in fact in joint cultivation. If at all the defendants are in joint cultivation with the plaintiff then in the cultivation column their names should have been entered. The entry in the 7/12 extract made of cultivation as 'Khudd'. In

paragraph-14, the learned District Judge also dealt with the documents produced by the defendants from Vishwasrao Naik Sugar Factory as also the affidavits of adjoining land owners. Ms. Kadam submitted that the defendants also filed affidavit of Tanubai Narayan Magdum, Rangrao Mahadeo Khonge and Kamlabai Mahipati Chawre. The learned District Judge in paragraph-14 has specifically recorded that *prima facie* the plaintiff is in and was in exclusive possession of the suit land to the extent of share of Bhau Jivba Yadav. I do not find that learned District Judge has committed any error in interfering with the discretionary order passed by the learned trial Judge. Hence, the petition fails and the same is dismissed.

(R. G. KETKAR, J.)