

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5215/2015

Smt. Sunanda Bhagwat Jadhav & Anr. ... Petitioners
V/s.
Dnyaneshwar Laxman Dongre & Ors. ... Respondents

Mr. P. M. Arjunwadkar for the petitioners

CORAM: K.K. TATED, J.
DATED : JUNE 13, 2016

P.C. :

1. Heard the learned counsel for the petitioners. He placed on record an additional compilation of documents. Same is taken on record.
2. By this petition under Article 227 of the Constitution of India, the Petitioner defendant No.1 and 5 challenge the concurrent findings of fact recorded by both the courts below i.e. allowing the application made by the respondent plaintiff under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 for restraining the petitioner defendant from disturbing the plaintiff's possession in respect of the suit property i.e. gut No.452/1 admeasuring 1H 44.5 R (south side).
3. In the present proceedings, the respondent plaintiff filed Regular Civil Suit No.237/2008 in the court of Civil Judge, Junior Division Rajguru Nagar, Dist. Pune on 14.07.2008 for permanent injunction restraining the petitioners from disturbing their possession in respect of the suit property i.e. gut No.452/1 (south side) admeasuring 1H 44.5R. In that suit the respondent plaintiff made an application under Order

XXXIX Rule 1 of the Code of Civil Procedure, 1908 (Exhibit- 6) restraining the petitioner defendant from disturbing their possession over the suit property till hearing and final disposal of the suit. That application was allowed by the Trial Court by order dated 19.07.2011.

4. Being aggrieved by the order dated 19.07.2011 passed by the Jt. Civil Judge, Junior Division, Rajgurunagar, the petitioner made Misc. Civil Appeal No.29/2014 (Old No.260/2011) in the court of District Judge, Khed at Rajgurunagar, which was also dismissed by the appellate court by order dated 06.12.2014. Therefore, the petitioner filed the present petition on 09.03.2015.

5. The learned counsel for the petitioner submits that both the courts below failed to consider the fact that though the respondent plaintiff claimed tenancy in respect of gut No.461/1, they surrendered south portion admeasuring 1 H 44.5 R to the original landlord. Thereafter the same was purchased by the petitioner defendant. Hence, there was no question of granting any injunction in favour of the respondent plaintiff. In support of his contention he relies on the order in respect of suit property passed by the Maharashtra Revenue Tribunal, Pune in revision application filed on 10.12.1981 against the order dated 14.09.1981 in case No.TA-22/1980. He submits that the member of the Maharashtra Revenue Tribunal, Pune in paragraph 2 specifically recorded that the original tenant i.e. predecessor of respondent plaintiff surrendered south portion of the suit property to the original owner and thereafter the original owner sold the same to the present petitioner defendant. On the basis of this submission, the learned counsel for the petitioner submits that the impugned orders

passed by both the courts below are liable to be set aside.

6. Heard the learned counsel for the petitioner at length. It is to be noted that, there are concurrent findings of fact recorded by both the courts below at the time of granting injunction in favour of the plaintiff restraining the petitioner defendant from disturbing their possession during pendency of the suit. At the time of granting injunction, the Trial Court relied on proceedings before the revenue authority. In paragraph 13, the Trial Court specifically recorded that considering the proceedings under section 32(G) of the Bombay Tenancy and Agricultural Lands Act, 1948 prima facie, the plaintiff has made out a case for granting injunction restraining the defendant from disturbing their possession. Apart from that the Trial Court passed impugned order on 19.07.2011 and the same was confirmed by the District Court by order dated 06.12.2014. This itself shows that since last 6 years, the order is running against the petitioner defendant.

7. Considering the reasons given by the trial court at the time of allowing the application made by the respondent plaintiff under Order XXXIX Rule 1 of the Code of Civil Procedure, 1908 and the order passed by the Revenue Authority placed on record by the petitioner by way of additional compilation of documents, I am of the opinion that the petitioner failed to make out any case to set aside the order passed by both the courts below. Hence, Writ Petition stands rejected. No order as to costs.

(K.K. TATED, J.)