

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition NO. 4194 OF 2016

Narayan Gotiram Pawar

...Petitioner

Versus

Manikchand Rupchand Palange
And Anr.

...Respondents

....

Mr. Rahul S. Kadam, Advocate for the Petitioner.

....

CORAM : R. G. KETKAR, J.

DATE : 22nd APRIL, 2016

P.C.

1. Heard Mr. Rahul Kadam, learned Counsel for the petitioner, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 23.3.2016 passed by the learned District Judge-1, Barshi in Civil Misc. Appeal No.47/2015. By that order, learned District Judge allowed the appeal preferred by the defendants and quashed and set aside the judgment and order dated 9.9.2015 passed by learned Jt. Civil Judge, Junior Division, Karmala below exhibit-5 in R.C.S. No.27/2015. Learned District Judge

dismissed the application.

3. In support of this Petition, Mr. Kadam relied upon (1) tenancy agreement dated 10.2.1986 executed by Jaganath Shivram Palange and Roopchand Shivram Palange in favour of the plaintiff and in particular paragraph-4 thereof, (2) agreement of sale dated 7.3.1988 executed by Jagannath Shivram Palange and Roopchand Shivram Palange in favour of the plaintiff, and (3) sale deed dated 11.1.1991 executed by Dattatray Jagannath Palange in favour of the plaintiff. He submitted that after considering the material on record, learned trial Judge allowed the application Exhibit-5 on 9.9.2015. As against this, learned District Judge interfered with the discretionary order passed by the learned trial Judge. He submitted that the defendants are not residing at village Bitargaon and are residing at Solapur. The plaintiff is in settled possession since 1986. Learned District Judge committed serious error in allowing the appeal.

4. With the assistance of Mr Kadam I have perused the tenancy agreement dated 10.2.1986, agreement of sale dated 7.3.1988 as also the sale deed dated 11.1.1991. Perusal of these

documents *prima facie* does not indicate that the partition was effected by metes and bounds. In view thereof, the plaintiff cannot claim to be in possession of a specific portion in the suit property. Learned District Judge observed that the remedy available to the plaintiff is to institute a suit for partition as material on record does not disclose that the partition was effected between the brothers. In view thereof, I do not find that the learned District Judge has committed any error in passing the impugned order. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Deshmane (PS)