

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2462 OF 2016

Yogesh Shivaji Shejul

Petitioner

Versus

Pandharinath Yadav Shejul & others

Respondents

Mr.S.P. Brahme advocate for the petitioner

Mr. Zafar M. Pathan advocate for Respondents

CORAM : **RAVINDRA V. GHUGE, J**

(Date : 13th July, 2017.)

PER COURT :-

1 The petitioner is aggrieved by the interlocutory order dated 22.8.2013, passed by the Trial Court below Application Exhibit 22 invoking order 39 Rules 1 & 2. Consequentially, the petitioner – defendant No.3 has been injuncted from causing obstructions to the possession of the plaintiff, over the suit property and from dispossessing her, otherwise than by following the due process of law. The petitioner is also aggrieved by the Judgment of the Appeal Court dated 27.11.2015, by which the Miscellaneous Civil Appeal No.95/2014 (Old No.40/2013) has been rejected.

2 Learned counsel for the petitioner has strenuously submitted that, the petitioner has been put into possession of the suit property by virtue of the sale deed dated 3.11.2011

executed by the original owner of the suit land. The said sale deed itself indicates the clause that, the petitioner was put into possession. In fact the sale deed specifically mentions that, the petitioner has been placed in possession of the suit land. Consequentially, the trial Court as well as the Appeal Court have committed a grave error in concluding that the plaintiff is in possession.

3 It is further canvassed that the 7/12 extracts and the revenue records, pursuant to the sale-deed dated 3.11.2011 indicate the name of the petitioner in such records. It is also canvassed that, the plaintiff is unable to show as to why she has acquired the possession of the suit land.

4 Learned counsel for the plaintiff No.2 submits that plaintiff No.1 i.e. respondent No.1 herein, has withdrawn from the suit. Plaintiff No.2, who is an aged lady is now prosecuting the suit. Her long standing possession from 1975 has been undisturbed. The Trial Court, as well as the Appeal Court have come to a prima facie conclusion that, she is in possession and defendant No.3 the petitioner herein is trying to dispossess her. It is then submitted that in the supervisory jurisdiction of this Court, merely because a second view is possible, there can be no interference in the impugned order.

5 I have considered the submissions of the learned advocates, as are recorded above.

6 I have gone through the impugned interlocutory order passed by the Trial court and the Judgment of the Appeal court. It is evident that both the Courts below have prima facie found the plaintiff No.2 lady to be in possession of the suit property. It is trite law that the injunctory orders in the matters of properties and agricultural lands are to be passed based upon the factum of possession of such suit property. If long standing possession is established, even prima facie, such possession has to be protected so as to enable proper adjudication in the suit.

7 Considering the above and merely because a different view can be taken in the matter, I do not find that the impugned order needs to be interfered with, unless it is found to be erroneous and likely to cause grave injustice. In the light of above, this petition being devoid of merit, is therefore, dismissed.

(RAVINDRA V. GHUGE , J)