

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7608/2017

1. Subhash Kacharu Lokhande,
Age: 35 years, Occu: Agriculture,
R/o: Sirajgaon Tq. Kannad,
District Aurangabad.
2. Arjun Kacharu Lokhande,
Age: 35 years, Occu: Agriculture,
R/o: Sirajgaon Tq. Kannad,
District Aurangabad. ...PETITIONERS

Versus

Rahul Gunwant Kamble,
Age: 35 years, Occu: Agriculture,
R/o: Sirajgaon Tq. Kannad,
District Aurangabad. ...RESPONDENT

WITH

WRIT PETITION NO. 7681/2017

Arjun Kacharu Lokhande,
Age: 35 years, Occu: Agriculture,
R/o: Sirajgaon Tq. Kannad,
District Aurangabad. ...PETITIONER

Versus

1. Rangnath Ramrao More,
Age: 40 years, Occu: Agriculture,
R/o: N-11, K 37/8, Navjeevan
Colony, Hudco, Tq. & District
Aurangabad.

2. Rahul Gunwant Kamble,
Age: 35 years, Occu: Agriculture,
R/o: Sirajgaon Tq. Kannad,
District Aurangabad. ...RESPONDENTS

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Mr. Arun S. Shejwal, Advocate for Petitioners in both writ petitions.

Mr. D. Y. Nandedkar, Advocate for Respondents in both writ petitions.
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CORAM : T. V. NALAWADE, J.

DATED : 05TH JULY, 2017.

ORAL ORDER :-

1. The first proceeding is filed to challenge Judgment and order of Miscellaneous Civil Appeal No.153/2016 which was pending in the Court of District Judge – 5, Aurangabad. The appeal was filed by respondent Rahul Kamble to challenge the order of refusal of temporary injunction, made on Exh. 5, in Regular Civil Suit No.14/2016, by the Learned Civil Judge, Junior Division, Kannad. The Trial Court had refused to grant application relief of temporary injunction in favour of Rahul Kamble, and that order is set aside by the District Court, and relief of injunction is granted in favour of Rahul Kamble, who is plaintiff of the suit.

2. The second proceeding is filed to challenge the

decision of Miscellaneous Civil Appeal No.152/2016, which was also pending in the Court of District Judge –5, Aurangabad. This appeal was also filed by Rahul Kamble against present petitioner. This appeal was filed to challenge the order of temporary injunction made against Rahul Kamble in suit filed by Arjun Lokhande bearing Regular Civil Suit No.50/2015, which is pending in the Court of Civil Judge, Junior Division, Kannad. In this appeal, the order of temporary injunction granted by Civil Judge, Junior Division, is set aside by District Court.

3. Heard both the sides.

4. It is case of petitioner Lokhande that, suit property bearing Gut No.156 admeasuring 1 Hector 67 R, which also has 4 R portion barren land, was owned by one Uttam Satdive. It is contended that, the family of the petitioner was cultivating this land for about 20 years for Uttam Satdive. It is contended that, Uttam wanted to sell the property, and as permission of revenue authority was necessary, application was moved before the Collector, Aurangabad, under provisions of Ceiling Act, 1961, and it was informed that the owner wanted to sell the property to

Rangnath More and petitioner Lokhande. It is contended that, by the order dated 04.05.2010, the Collector granted the permission. It is contended that, Rangnath More agreed to sell the portion which he wants to purchase from Uttam Satdive, under agreement dated 28.01.2013, to the petitioner. It is contended that, most of the consideration was paid to Rangnath More and amount of Rs.1,00,000/- was remaining to be paid. It is contended that, as petitioner was in possession, his possession was continued, on the land.

5. It is case of the petitioner that, behind his back Uttam Satdive created some record in favour of Rangnath More and the land was transferred to Rangnath More. It is contended that, Rangnath More then transferred the suit property to respondent Kamble, under registered sale deed on 19.07.2013. It is contended that, though sale deed is executed in favour of Kamble, the petitioner never lost the possession over the suit property. It is contended that, on the basis of sale deed, some entries are made in revenue record, and due to that, Kamble is trying to interfere in possession of petitioner over the suit property. By making these contentions, relief of temporary injunction was sought by petitioner Lokhande. Kamble has contended that, he has

purchased the property under sale deed dated 19.07.2013 and the possession was handed over to him of the entire land and on the date of the suit he was in possession.

6. The Trial Court relied on one letter given by Talathi to the effect that, Lokhande was in possession. Talathi had prepared panchanama also to show that, Lokhande was in possession. Submissions were made in present proceeding that, the said panchanama is declared as invalid by Tahsildar as the procedure given in Land Revenue Code was not followed. Some record in that regard is produced, and it is dated 12.06.2017. Revenue record is produced like 7/12 extract and it shows that, right from the year 1987-1988 till the year 2009-2010 the owner Uttam Satdive was in possession of the land and his name was entered in cultivation column also. The 7/12 extract shows that, by mutation entry No.995 which was effected due to sale deed made in favour of Rangnath More, the name of Uttam Satdive was deleted and name of Rangnath More was entered in revenue record as owner. In the year 2010-2011, the name of Rangnath More was entered in crop cultivation column also. After the sell of the land to Kamble by More, the name of Kamble was also entered in ownership column,

by mutation entry No.1256.

7. It is case of petitioner that, he has been in possession of the suit land for more than 20 years but he has no record to show that Uttam Satdive had given the land for cultivation, as tenant, to him. The practice of entering name of third party in cultivation column of 7/12 extract was stopped by the State Government from the year 2011-2012. Till that year, at no time, the name of petitioner or his father was entered in cultivation column. Though the petitioner is having agreement allegedly made by Rangnath More in his favour, which is dated 28.01.2013, in that agreement there is no mention that possession was given by Rangnath More to the petitioner. In Maharashtra State, as per the provision of 'Article 25' of the Bombay Stamp Act, when there is such agreement with handing over possession, that agreement needs to be registered and further necessary stamp duty on consideration amount needs to be paid. In any case the document does not show that, the possession was given to the petitioner when the name of Rangnath More was entered in possession column of 7/12 extract in the year 2010-2011.

8. Entry of the name in crop cultivation column is made

every year as per provisions given in Maharashtra Land Revenue Code. For making such entry, there is enquiry made every year which is known as 'crop enquiry'. No such entry is made in favour of petitioner. The entries were in favour of Satdive and More, and so, it needs to be presumed that they were cultivating the land as owners. The Tahsildar has rightly held that, the panchanama prepared by Talathi cannot be used as the said panchanama was not part of crop enquiry, and Talathi has no power to make any entry in the revenue record. These circumstances were not considered by the Trial Court, but they are considered by the District Court. Now that record which was made in favour of petitioner is held to be invalid by the Tahsildar, who is competent authority in this regard. In view of these circumstances, this Court holds that, it is not possible to interfere in the decision given by the District Court in favour of Kamble. In the result both the petitions stand dismissed.

[T. V. NALAWADE, J.]

vjg/-