

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4779 OF 2016

1. Sugarabai Hansraj Jadhav,
Age-72 years, Occu-Household,
2. Nimba Mango Jadhav,
Age-62 years, Occu-Agriculturist,

Both are R/o Vasant Nagar,
Parola, Tq.Parola, Dist.Jalgaon

-- PETITIONERS

VERSUS

1. Ranjanabai Vitthal Patil,
Age-40 years, Occu-Agriculturist and
Household, R/o Anturli,
Tq. Pachora, Dist.Jalgaon,
2. Kalpana Kantilal Chavan,
Age-30 years, Occu-Agriculturist
and Household,
R/o Mukti, Tq. and Dist.Dhule.

-- RESPONDENTS

Mr.B.R.Warma, Advocate for the petitioners.
Mr.M.B.Sandanshiv, Advocate for the respondents.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 04/07/2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner is aggrieved by the judgment dated 30/10/2015

delivered by the Appeal Court in a Misc.Civil Appeal No.19/2014 by which injunction has been clamped against the petitioners who are original defendants.

3. I have considered the submissions of the learned Advocates for the respective sides.

4. The respondents/plaintiffs have averred in RCS No.60/2013 that they are in possession of the suit land situated in Gat No.125/1 admeasuring 1hectre 84 R and Gat No.125/2 admeasuring 1 hectre 85 R. The suit was filed for seeking injunction as against the defendants on the ground that they are causing interference in the peaceful possession of the plaintiffs over the agricultural land.

5. The application for temporary injunction under Order 39 Rule 1 of the CPC was considered by the Trial Court. It was concluded in paragraph Nos.8 and 9 that the plaintiffs, besides making averments in the plaint, have not placed on record prima facie evidence to establish that they are possessing the suit land, are cultivating it and there is interference in their peaceful possession by the defendants. Details as regards attempt to encroach or abusing and threatening the plaintiffs were also not brought on record. Considering that there

was no prima facie material available to conclude that the possession and cultivation of the plaintiffs needs to be protected, the Trial Court rejected the application for injunction.

6. By the impugned judgment, the Appeal Court overturned the conclusions of the Trial Court on the ground that the 7/12 extract indicates that the plaintiffs are owners and hence it is presumed that they are in possession. Beyond this conclusion which is based on the 7/12 extract and the mutation entry No.873, there was no material before the Appeal Court to hold that the plaintiffs are in possession and are cultivating the suit land.

7. The Hon'ble Apex Court (3 Judges Bench) in Rame Gowda Vs. M.Varadappa Naidu and another [2004(1) SCC 769 = 2004(3) BCR 788] has observed in paragraph Nos. 8 and 9 as under :-

“8. It is thus clear that so far as the Indian law is concerned the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law; he cannot take the law in his

own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force or taking law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. The owner of any property may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy character, or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to have recourse to law. In the last of the cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true owner.

9. It is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by a catena of decisions. Illustratively, we may refer to *Munshi Ram and Ors. Vs. Delhi Administration* (1968) 2 SCR 455, *Puran Singh and Ors. Vs. The State of Punjab* (1975) 4 SCC 518 and *Ram Rattan and Ors. Vs. State of Uttar Pradesh* (1977) 1 SCC 188. The authorities need not be multiplied. In *Munshi Ram &*

Ors.'s case (supra), it was held that no one, including the true owner, has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in the due course of law, he is entitled to defend his possession even against the rightful owner. But merely stray or even intermittent acts of trespass do not give such a right against the true owner. The possession which a trespasser is entitled to defend against the rightful owner must be settled possession, extending over a sufficiently long period of time and acquiesced to by the true owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and re- instate himself provided he does not use more force than is necessary. Such entry will be viewed only as resistance to an intrusion upon his possession which has never been lost. A stray act of trespass, or a possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force. In Puran Singh and Ors.'s case (supra), the Court clarified that it is difficult to lay down any hard and fast rule as to when the possession of a trespasser can mature into settled possession. The 'settled possession' must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser. The phrase 'settled possession' does not carry any special charm or magic in it; nor is it a ritualistic formula which can be confined in a strait-jacket. An occupation of the property by a person as an agent or a servant acting at the instance of the owner will not amount to actual physical

possession. The court laid down the following tests which may be adopted as a working rule for determining the attributes of 'settled possession' :

i) that the trespasser must be in actual physical possession of the property over a sufficiently long period;

ii) that the possession must be to the knowledge (either express or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of animus possidendi. The nature of possession of the trespasser would, however, be a matter to be decided on the facts and circumstances of each case;

iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner; and

iv) that one of the usual tests to determine the quality of settled possession, in the case of culturable land, would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner has no right to destroy the crop grown by the trespasser and take forcible possession."

8. The learned Advocates for the respective sides submit that they are willing to maintain the status as it existed on the date of the suit. Learned Advocate for the plaintiffs submits that they are in possession.

9. Considering the above, this petition is disposed of with the direction to the litigating sides to maintain the status with regard to the suit agricultural land as on the date of the filing of the suit. The litigating sides are at liberty to move a joint/individual application for appointment of a Court Commissioner for causing the measurement of the entire suit lands as well as any other adjoining lands owned and possessed by the litigating sides, after framing of the issues. The statement is recorded that the litigating sides would not oppose such an application, if filed by either of the sides.

10. With the above directions, this petition is partly allowed and rule is made partly absolute accordingly.

11. In the event, the pendency before the Trial Court is not too large, the Trial Court would consider the expeditious disposal of the suit.

(Ravindra V.Ghuge, J.)