

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4474 OF 2016

Sudam S/o Dattrao Sunegaonkar

Petitioner

Versus

Keshavrao S/o Amrutrao Pawde
died through L.R.'s

I) Gulap s/o Keshavrao Pawde & others

Respondents

Mr. A. H. Kasliwal advocate for the petitioner

Mr. Y.K. Bobade h/f Mr. A.B. Shinde advocate for Respondent Nos.1 & 2

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

(Date : 17th July, 2017.)

PER COURT :-

1 The petitioner is aggrieved by the order dated 11.3.2016, by which the Trial Court has rejected Application Exhibit 5 filed by the petitioner – plaintiff, seeking injunction under order 39, Rules 1 & 2 of the Civil Procedure Code against the defendants in RCS No.68/2016. The petitioner is further aggrieved by the Judgment of the Appeal Court dated 4.4.2016 by which MCA No.21/2016 has been dismissed.

2 The plaintiff was under protective orders of the Court in the nature of maintaining *status-quo* till the decision on Exhibit 5, there-after during pendency of the Appeal and by order dated

4.4.2016, the Appeal Court has continued the said protection to enable the petitioner to approach this Court. By order dated 18.4.2016, this Court has continued the protection in favour of the petitioner.

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

4 There is no dispute that the defendants were in possession of the land in survey No.18/1 admeasuring 2 acres and 12 gunthas. In two acres, the plaintiffs are cultivating which continues to be an agricultural land. 12 Gunthas are said to have been converted into non-agricultural and said NA permission has been granted to the original landlord Keshavrao A. Pawade. 12 gunthas were then divided into plots and two plots are said to have been sold by the deceased Keshavrao during his life time and the sale of such land has occurred in 2000.

5 Both the Trial Courts have concluded that the defendants, who have parted with two acres agricultural land are in possession of 12 gunthas. 7/12 Extracts also show the name of the deceased Keshavrao. The petitioner – plaintiff had sought an injunction below Exh.5 for preventing the defendants from

causing obstruction and interference in his peaceful possession of that land admeasuring two gunthas. Both the Courts below have concluded that the plaintiff has not succeeded in prima facie establishing that he is in possession of 12 gunthas.

6 It cannot be ignored that from the institution of the suit on 12.2.2016 till today, the plaintiff is protected by the order of maintaining status-quo. Apprehension of the plaintiff is that the defendants may create third party interests by alienating the 12 Gunthas and the suit would be rendered infructuous.

7 Learned counsel for the defendants submits that even if third party interests are created, the said aspect can be gone into by the Trial Court, while adjudicating upon the suit.

8 It cannot be ignored that creation of third party interests, at times creates complications and those persons who step into the suit property as its owners on the basis of creation of third party interests, will have to be added in the suit.

9 Considering the peculiarity of these facts and taking into account that the plaintiff is under the protective orders of the Courts, for a long duration, I deem it appropriate to dispose of

this petition by directing the defendants not to create third party interest in the suit property. In the event they desire to dispose of the said suit property of 12 gunthas, they may approach the Trial Court and justify their request for seeking permission.

10 Considering the above, this petition is disposed of by directing the defendants, not to create third party interest in the suit property and in the event if it is so desired, they would approach the Trial Court with a proper application, seeking permission to create such interest and the Trial Court would consider such application, on its own merits.

(RAVINDRA V. GHUGE , J)