

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

Writ Petition No. 07754 of 2017

With

Writ Petition No. 07755 of 2017

District : Jalgaon

1. Mangala Santosh Shivnekar,
Age : 42 years,
Occupation : Agriculture.
2. Santosh Lalchand Shivnekar,
Age : 48 years,
Occupation : Service.

Both R/o. 28, Krushi Nagar,
Bhadgaon Road, Pachora,
Taluka Pachora,
District Jalgaon.

.. Petitioners
(Original defendants)

versus

Bhagwat s/o. Shankar Shukla,
Age : 56 years,
Occupation : Agriculture,
R/o. Sangvi, Taluka Pachora,
District Jalgaon.

.. Respondent
(Original plaintiff)

.....

Parties to both petitions are same.

*Mr. R.N. Dhorde, Senior Advocate, instructed by
Mr. V.R. Dhorde, Advocate, for petitioners.*

*Mr. S.P. Brahme, Advocate, with
Mr. Bipinchandra K. Patil, Advocate, for the respondent.*

CORAM : SUNIL P. DESHMUKH, J.

DATE : 04TH JULY 2017

ORAL JUDGMENT :

01. Rule. Rule made returnable forthwith. Heard Mr. R.N. Dhorde, learned senior counsel appearing for petitioners and Mr. S.P. Brahme, learned counsel appearing for the respondent, by consent finally.

02. Petitioners are original defendants no.01 and 02 in Regular Civil Suit No. 082 of 2016 instituted by present respondent - original plaintiff seeking decree of perpetual injunction in respect of land bearing Gut No. 104 admeasuring 05 Hectare, 48 Are, situated at Naiknagar, Taluka Pachora, District Jalgaon.

03. Petitioners claim themselves to be Watandars of aforesaid land and purport to assert claim for possession over suit property. Mr. Dhorde, learned Senior Counsel, during the course of his submissions, has referred to various stages as referred in the synopsis. He refers to that around 1946-47, father of plaintiff - respondent, namely, Shankar Shukla, claimed tenancy over suit land. Around 1967, mutation entry no.1567 had been effected recording particularly that provisions of section 32G of the Bombay Tenancy & Agricultural Lands Act, 1948 [Now "*Maharashtra Tenancy & Agricultural Lands Act, 1948* - hereinafter referred to as "*Tenancy Act*"], are not applicable, the land being Watan Inam land. The mutation

entry had been effected referring to re-grant of the land to original landlords by the State Government.

04. Learned senior advocate refers to that father of plaintiff had initiated Tenancy Case No. 07 of 1987 before Tahsildar, Pachora, purportedly pursuant to Section 32G of the Tenancy Act, seeking declaration of ownership. Said proceedings has resulted into dismissal due to non-prosecution.

05. Around 2000 the respondent - plaintiff claiming to be in possession of suit land after death of his father preferred Tenancy Case No. 02 of 2000 also pursuant to section 32G of the Tenancy Act. Around the same time, landlords had preferred Tenancy Case No. 01 of 2000 pursuant to Section 70B of the Tenancy Act

06. The tenancy proceedings initiated by the respondent - plaintiff had been allowed whereas the one filed by landlords had been dismissed.

07. Landlords had preferred appeal against the order of Tahsildar in Tenancy Case No. 02 of 2000 which was allowed by the Sub-Divisional Officer. A revision preferred against the Sub-Divisional Officer's order before the Maharashtra Revenue Tribunal, at the instance of the respondent - plaintiff, had resulted in failure

and subsequent writ petition against the order of the Maharashtra Revenue Tribunal had been dismissed by this court with liberty.

08. Thereafter, the respondent - plaintiff had filed application before the Tahsildar for delay condonation in Tenancy Case No. 01 of 1987. Said application was rejected around September, 2016. Learned counsel for respondent purports to submit that proceeding against aforesaid is pending.

09. While these are proceedings on one hand, on the other, petitioners purchased the suit land under different registered sale deeds, all in 2015 and claim to have been put in possession under the transactions.

10. Learned senior advocate submits that, in 2011, landlords had filed proceedings for possession pursuant to sections 59 and 242 of the Maharashtra Land Revenue Code, 1966, against the respondent - plaintiff. Said proceedings were allowed and the Tahsildar passed order on 23-11-2016 directing handing over of possession to landlords and purchasers. An appeal against said order before Sub-Divisional Officer, at the instance of plaintiff - respondent had resulted into failure.

11. In February, 2017 petitioners approached Tahsildar for

execution of order directing to give possession, pursuant to which the Tahsildar on 06.03.2017 had issued directions to put the petitioners in possession of the suit land. Writ petition no. 04337 of 2017 had been preferred before this court by the respondent - plaintiff which had been withdrawn with liberty to avail of alternate remedy. On 05-04-2017, possession of the land had been delivered to petitioners under a *Panchanama* and by executing a possession receipt.

12. Learned senior advocate submits that in the meanwhile, respondent - plaintiff instituted Regular Civil Suit bearing No. 082 of 2016 for injunction and along with that, the plaintiff had filed application - Exhibit 06 for temporary injunction. In response to that, petitioners had filed a written statement and also made a counter claim for injunction along with application - Exhibit 21 for temporary injunction. Learned Civil Judge (J.D.), Pachora, under his order dated 28-11-2016, had rejected both applications Exhibit 06 and Exhibit 21 refusing temporary injunction to the parties.

13. Petitioners preferred Misc. Civil Appeal bearing No. 070 of 2016 against the rejection of application - Exhibit 21 and the plaintiff - respondent preferred Misc. Civil Appeal bearing No. 071 of 2016 against dismissal of application - Exhibit 06. Learned senior advocate submits that under order dated 15-04-2017, the appellate

court dismissed the appeal of petitioners and allowed that of the respondent - plaintiff.

14. Learned senior advocate vehemently submits that while considering matter for temporary injunction, situation as on the date of suit ought to have been examined by appellate court and appeal preferred by petitioners - defendants should have been allowed and appeal preferred by the respondent - plaintiff should have been dismissed. He submits that record would bear as on the date of suit, the respondent - plaintiff cannot be said to be in possession of suit property enabling him to have temporary injunction. According to him, on the date of suit, petitioners were in possession which can be seen from the orders passed by the revenue authorities. He submits that there has been specific order in respect of agricultural year 2015-16 wherein claim made by the plaintiff - respondent over cultivation has been rejected by Tahsildar, referring to that, no proper procedure was followed therefor. He submits that recitals in the sale deeds do depict delivery of possession to petitioners by their vendor. This coupled with, reinforcement by subsequent events whereunder pursuant to directions issued in the proceedings for possession, possession has been given to petitioners.

15. Learned senior advocate submits that petitioners were put in possession actually pursuant to the sale deeds, whereas so far

as respondent - plaintiff is concerned, after dismissal of their proceedings before Maharashtra Revenue Tribunal against the order granting possession to defendants - vendors, proceedings preferred by the plaintiff are pending in this court. He submits that in the proceedings for possession, petitioners were successful wherein there has been order for possession and so far as revenue entries are concerned, the respondent - plaintiff has failed. Thus, the respondent - plaintiff is not in possession of the suit land as on the date of suit in the year 2015-16. The suit has been instituted in the year 2016. He submits that appellate court, disregarding all this background, has passed an order on assumptions and presumptions and conjectures and surmises. The case of petitioners about possession gets fortification from proceedings herein before referred to and the contemporaneous record as has been subsisting since 2015. In the face of aforesaid situation, he submits that observations of appellate court, that defendants are not coming with clean hands, is damaging observation, quite away from record. He submits that order of appellate court deserves to be set aside. He, therefore, submits that both the writ petitions be allowed and temporary injunction application filed by the respondent - plaintiff be rejected and that of petitioners - defendants be allowed.

16. Countering aforesaid submissions of learned senior advocate appearing on behalf of petitioners, Mr. Brahme, learned

counsel for the respondent - plaintiff, submits that earlier failure of tenancy proceedings has not been a decision on merits and the later one is being revived pursuant to liberty granted by the High Court and is yet pending. During all these years, the revenue record since 1945-46 onwards continuously bears that it is the plaintiff - respondent's predecessor who has been in possession of the suit land without interruption whatsoever till 2011-12. He submits that petitioners were not in possession of the suit land, is an acknowledged position borne out from record since petitioners' predecessor had filed proceedings for possession in 2011 pursuant to an order in certain proceedings. The proceedings for possession initiated in 2011 had culminated into an order for possession in 2016.

17. Mr. Brahme purports to point out that whereas aforesaid being the position, landlords - Watandars had indulged into various nefarious activities, *inter alia*, executing sale deeds of suit land. They entered into the transaction, taking different stand, while agreement of sale was executed, it has been referred to that permission was required and while sale deeds in the interregnum had been executed hastily, referring to that no permission would be required for transfer of suit land. While on one hand, proceedings for possession were initiated in 2011, sale deeds were executed containing recitals showing delivery of possession. He submits that

there is no record whatsoever to show that the respondent - plaintiff had been dispossessed by taking recourse to any due process of law. He submits that instead of prosecuting proceedings for possession initiated in 2011, petitioners tried to cause alteration in maintenance of revenue record and caused hindrance while the respondent - plaintiff had requested to take entries in the revenue record. He submits that while suit has been instituted in 2016, the possession receipt and the *Panchanama* of delivery of possession has been of April, 2017, during the pendency of the suit. He submits that the order passed by Tahsildar in respect of deleting respondent - plaintiff's name from cultivation column and taking that of defendants, is an order which is quite intriguing while the body of the order shows that yet proper procedure for taking entry in cultivation column is not followed. It is difficult to understand as to how the operative order would direct to insert names of petitioners.

18. The entire record had been properly scanned by appellate court. Despite such record, the trial court had been hesitant to pass order. Appellate court has corrected the error and has passed order. Order of appellate court does not require any interference with by the high court. He submits that appellate court has taken a decision which cannot be said to be away from the record before the court and in such a case, just for the reason that other view could have been possible, powers of this court may not be

invoked. He, therefore, urges to dismiss the writ petitions.

19. While to some extent, initiation of proceedings on either side and its results have not been disputed, it emerges that there is no dispute so far as petitioners are concerned, about the suit land being in possession of the respondent - plaintiff, at least till 2012-13 and preparation of revenue record thereafter appears to be in dispute. The suit has been filed on 17-06-2016. It is further seen it is undisputed position that in 2011, petitioners' predecessor had moved pursuant to orders of re-grant for possession. The order of possession had been passed in November, 2016 by the Tahsildar in the proceedings for possession pursuant to re-grant. Appeal therefrom at the instance of the respondent - plaintiff failed in middle of December, 2016. Around February, 2017, petitioners had filed application for execution of the order of possession and thereafter on 05-04-2017, possession is shown to have been delivered. Whereas, on the other hand, before that, sale deeds had been executed showing delivery of possession to petitioners in 2015. Revenue entries of 2013 have been kept vacant since some proceedings had taken place before. In the circumstances, looking at that, there is no reliable record so far as coming into possession of petitioners - defendants no.01 and 02, during the course from 2012-13 or for that matter in 2015-16 or before April 2017, the possession would be required to be adjudged on the date of the suit looking at

the facts and circumstances and possibility emanating therefrom which appears to have been rightly done by appellate court as would emerge from observations in paragraphs no.09 to 13 as well as observations of trial court in paragraph 10 which are re-produced herein below :-

Paragraphs no.09 to 13 of appellate court's order

09. The plaintiff has contended that the suit property is the tenancy land of which his father Shankar Ganesh Shukla was the tenant and cultivating the same since 1946-47. It is contended that on or about 25.11.1990 his father died and since then the plaintiff is in possession of the suit property being the legal heir and cultivating the suit property. He has placed on record the copies of 7/12 extracts of the suit property from the year 1941-42 onwards which show that the name of the father of the plaintiff namely Shankar Ganesh Shukla as cultivator of the suit property. It appears that in the year 2013 the name of the plaintiff has been discontinued as cultivator / possessor of the suit property. Mutation entries No.737, 738 and 1374 are filed on record, which shows that father of the plaintiff namely Shankar Ganesh Shukla was the tenant in the suit property. There are several proceedings as per the provisions of Tenancy Act before the Tenancy Authorities filed by the plaintiff. Learned advocate for the plaintiff filed on record the copy of the order dated 26.08.2016 passed by the Hon'ble High Court in Criminal Application No. 4472 of 2016 and pointed out that though the proceeding was in regard to the grant of bail to the plaintiff and others, Hon'ble High Court has observed in Para No.11 that the documents annexed along with the application contains the record of right which shows that on 18.06.1947 father of the plaintiff Shankar

Ganesh Shukla became protected tenant and there was litigation among the Deshmukh family and the present plaintiff.

10. It is the case of the defendants that they have purchased the portion of the suit property i.e. 0.3.3 Anewari from Ramrao Anandrao Deshmukh vide registered sale deed dated 24.08.2012 and accordingly mutation entry No.649 is effected. So also, another portion of the suit property 0.6.4 Anewari vide registered sale deed dated 29.12.2015 and mutation entry No.660 is effected on the basis of said two sale deeds, the defendants are claiming that they are in possession of the suit property. Learned advocate for the defendant submitted that the suit property is the Inam land which was given by the State for services rendered, therefore, Tenancy Act is not applicable. He placed reliance on the government resolution dated 09.07.2002. It is submitted that unless the person cultivated the suit land has authorisation, is a trespasser. It is submitted that it is nowhere shown that how plaintiff came as a protected tenant as pleaded in the plaint.

11. Learned advocate for the plaintiff has filed the copy of order dated 23.11.2016 passed by the learned Tahsildar, Pachora, as per the provisions of Section 59 and 242 of the Maharashtra Land Revenue Code and the copy caveat notice filed by the defendants which speaks about handing over of possession by the plaintiff to the defendants and submitted that the plaintiff is the *defacto* possessor of the suit property.

12. Learned advocate for the defendants vide list documents dated 06.04.2017 filed on record the copy of Writ Petition No. 4337 of 2017 and order dated 03.04.2017 passed therein by which the plaintiff sought withdrawal of the said writ petition. He has also filed on record the order dated 06.03.2017 passed by the Tahsildar, Pachora, bearing No. *Kul.Ka/Ka.Vi./72/2017* and the notice dated 20.03.2017

issued by the Mandal Adhikari, Varkhedi, Taluka Pachora, Dist. Jalgaon, regarding giving possession of the suit property to the defendants. He has placed on record the copy of Taba Pavati dated 05.04.2017 and panchanama dated 05.04.2017 and contended that the defendants had obtained the possession of the suit property from the plaintiff.

13. The defendants in their written statement-cum-counter claim initially contended that the suit property is in their possession and they placed on record the copies of sale deed of purchase of portions of suit property from the original owner. Now the defendant No.1 is contending that she has obtained the possession of the suit property from the plaintiff as per the Taba Pavati and the panchanama filed on record. In such situation, the defendants are not coming with the clean hands. Moreover, the registered sale deeds placed on record do not pertain to the entire suit property but of portion of the suit property. The revenue record reveals that the name of the father of the plaintiff is mutated as a protected tenant since last several years. There is nothing on record to show on what basis his name is discontinued after year 2013. Filing of the Taba Pavati and the panchanama at the fag end when the appeals are kept for passing of judgment, itself reveals that the defendants were not in the possession of the suit property at any point of time. In such situation, the plaintiff has made out the prima facie case, whereas the defendants have failed to prove their prima facie case. The defendants themselves have filed on record the order dated 06.03.2017 by which order of grant of police Bandobasta for taking the possession from the plaintiff is passed by the Tahsildar, Pachora. In regard to the Taba Pavati dated 05.04.2017 and the panchanama dated 05.04.2017 said documents are disputed by the plaintiff vide his say dated 06.04.2017 below Exh.55. Though on the basis of Taba Pavati and panchanama, the defendants are claiming to have obtained the possession of entire suit

property admeasuring 5-Hector 31-Ares, however, it is not the case of defendant No.1 that she has purchased the entire suit property. She has purchased the portions of the suit property as per the sale deeds placed on record. In such situation, the contention of defendants cannot be accepted and the balance of convenience tilts in favour of the plaintiff and there would be definitely irreparable loss to the plaintiff if injunction is refused to him. Therefore, I answer Points No.1 to 3 accordingly.

Paragraph 10 of the order passed by trial court

10. The main contention advanced on behalf of plaintiff is that he is protected tenant of the suit land and is in possession of it. The plaintiff has filed a bulk of revenue documents; prima facie perusal of which clearly shows that the suit land was initially in possession of the protected tenant i.e. father of plaintiff namely Shankar Ganesh Shukla till 1990-1991. Plaintiff has submitted a certified copy of 7/12 extract of suit land which is for the period of 1995-1996 to 2007-2008; which prima facie shows the name of plaintiff as cultivator after his deceased father Shankar Shukla. Not only this but the plaintiff also produced on record a certified copy of 7/12 extract of the suit land which is for the year 2008-2009 to 2015-2016. Further perusal of this 7/12 extract also depicts name of several persons as landlords of the suit land who are not made parties to the suit. Perusal of this 7/12 extract, prima facie, reveals that plaintiff was in possession of the suit land during the period of 2009-2010 to 2011-2012 and by order of Tahsildar in Pik-Pahani SR Case No.11/2012 dated 25-09-2013 the name of the plaintiff has been discontinued as cultivator / possessor of the suit land. Thus the name of the plaintiff does not find place in the cultivation / possession column of the suit land from the year 2012-2013 onwards.

20. It appears that by preponderance, judgment by the appellate court is not liable to be faulted with and it cannot be said facts and circumstances would require this Court to cause interference with the order of the appellate court.

21. Writ petitions, in aforesaid facts and circumstances, stand dismissed. Rule stands discharged. There shall be no order as to costs.

22. However, looking at the nature of dispute, it would be expedient that trial court proceeds with the suit expeditiously and dispose of the same preferably within twelve months from the date of receipt of writ of this order.

23. Needless to refer to that the observations appearing in this order as well as in the orders passed by the trial and the appellate courts would not have any decisive or influential efficacy and all observations are limited only to disposal of interlocutory proceedings and no further and shall not be deemed to have binding operation.

(Sunil P. Deshmukh)
JUDGE

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