

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8672 OF 2017
(Dattatray Vitthal Demgunde Vs. Subhash Jayram Demgunde)

Mr.S.N.Patil h/f Mr.G.K.Sontakke, Advocate for the petitioner.
Mr.Ajinkya Reddy, Advocate for the respondent.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 18/09/2017

PER COURT :

1. This matter was heard at length.
2. Affidavit in reply has been filed by the sole respondent.
3. Learned Advocate for the petitioner has strenuously criticized the impugned order dated 21/01/2017 by which the Trial Court has allowed application Exh.5 filed by the respondent/plaintiff, seeking injunction. The petitioner has also criticized the impugned order dated 01/04/2017 passed by the Appeal Court thereby rejecting the application for interim relief filed by the petitioner. The said Misc.Civil Appeal No.4/2017 is pending adjudication.
4. It also appears that the respondent has preferred RCS No.29/2016 seeking perpetual injunction against the petitioner for

having caused interference in his peaceful possession. As observed above, the Trial Court has granted an injunction in favour of the plaintiff/respondent and the Appeal Court has declined to interfere with the same at an interim stage by rejecting the application filed by the petitioner in the Misc.Appeal proceedings.

5. Learned Advocate for the petitioner has drawn my attention to the 11 grounds formulated by him in the memo of the petition. With the assistance of the learned Advocates, I have gone through the petition paper book.

6. It appears from the record that the petitioner was working in the Military Establishment and was in service. He is the cousin brother of the respondent. Mutation entry has been carried out on 18/10/1988 by virtue of a partition deed which indicates that the respondent has been given a share of 55 R in Gat No.183/1/1 and 55R in Gat No.183/1/2. This mutation entry is not challenged by the petitioner in any Court for the past 28 years. Grievance is that the respondent has donated 26R land for the purpose of a public hospital to the Zilla Parishad.

7. Learned Advocate for the petitioner categorically submits that

the mutation entry was only challenged before the S.D.O. He has not challenged the same in any proceeding before the Civil Court.

8. This Court has laid down the law in Shrikant R.Sankanwar and others Vs. Krishna Balu Naukudkar [2003(3) Bom.C.R.45] that mutation entries would not decide the title of any party. In this backdrop, it is conspicuous that the issue of title has not been questioned before any Civil Court by the petitioner so as to crystallize the claim of the petitioner.

9. This petition is directed against the interlocutory orders. Both the Courts have prima-facie concluded that the respondent/plaintiff is in possession of the suit land. Considering the above factors, I do not find that merely because a different view can be taken, that the impugned orders could be termed as being perverse or erroneous. This petition, being devoid of merit, is therefore, dismissed.

(Ravindra V.Ghuge, J.)