

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO.7143 OF 2016  
(Mohd. Imran Khan s/o Mohd. Israr Khan Vs. Arunkumar s/o  
Babarao Jadhav)

Mr.P.P.Mandlik, Advocate for the petitioner.  
Mr.A.D.Hande, Advocate for the respondent.

( CORAM : Ravindra V.Ghuge, J.)

DATE : 20/06/2017

PER COURT :

1. The petitioner is aggrieved by the interlocutory order dated 07/11/2015 passed by the Trial Court by which his application Exh.5 seeking temporary injunction under Order 39 Rule 1 and 2 has been rejected. The petitioner is also challenging the judgment of the Appeal Court dated 25/04/2016 by which MCA No.90/2015 filed by the petitioner has been rejected.

2. I have considered the strenuous submissions of Mr.Mandlik, learned Advocate for the petitioner and Mr.Hande, learned Advocate for the respondent.

3. The petitioner has filed RCS No.105/2015 praying for perpetual injunction against the defendant in relation to the suit land

admeasuring 29R out of the 68R situated in land S.No.23/4/2 in village Vasarani. The petitioner claims to have acquired the possession of the said land on the basis of an agreement to sale dated 24/12/2007 with Rajaram Shivram Ayyareddy. The agreement to sale indicates that Rajaram intends to sell ancestral property to the petitioner.

4. The father of the petitioner deceased Shivram had applied for registering a society by name Vishwakarma Magasvargiya Gruhnirman Sanstha. The application for such registration has been rejected. A revenue entry sought to be made in favour of the Rajaram was subsequently rejected and such rejection of the mutation entry has been sustained till the level of the Hon'ble Minister.

5. Grievance of the petitioner is that the defendant is disturbing his possession to the extent of area 29R which is adjoining the land of the defendant admeasuring 15x15 mtrs. situated at 23/D/1.

6. Learned Advocate for the respondent/defendant submits that he has nothing to do with the land S.No.23/4/2 and he has no interest in the said land. He is not disturbing anybody in the said land, much less the petitioner because the petitioner is not in

possession of any portion of that land.

7. The Trial court has concluded that the petitioner has not been able to establish as to how he has derived the possession of the suit land. His father Shivram had sought to mutate the said land in favour of the society. Rajaram is undisputedly the legal heir of Shivram. There is no mutation entry in the name of Rajaram with reference to the suit land. The agreement to sale was made by Rajaram claiming to be the heir of the Chief Promoter Shivram of the society. It is apparent that at this prima facie stage, the petitioner has not been able to demonstrate that he is in possession of the suit land and is cultivating the same.

8. Considering the above, I do not find that the concurrent findings of the Trial Court as well as the Appeal Court could be termed as being perverse or erroneous. Needless to state, the observations of both these Courts are at an interim stage and the claim of the petitioner in the suit would be decided on its own merits.

9. This petition, being devoid of merit, is therefore, dismissed.

( Ravindra V.Ghuge, J.)