

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

WRIT PETITION NO. 7751 OF 2017

Hausabai Ashok Pandit,
Age : 46 years, Occup. Household & Agri.
R/o : Mahaveer Nagar, Peer Bazar,
Osmanpura, Aurangabad.

...PETITIONER

VERSUS

Daulal Bhaurao Chavan,
Age : 76 years, Occup. Agriculture,
R/o : Ekod Tanda No.2,
Taluka and Dist. Aurangabad.

...RESPONDENT

Mr. A. P. Bhandari , Advocate for the petitioner.
Mr. R. K. Jadhavar, Advocate for the respondent.

CORAM : SUNIL P. DESHMUKH, J.

DATE : 26th JULY, 2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned Counsel for the parties by consent finally.
2. Petitioner is original defendant in Regular Civil Suit

No.725 of 2015 pending before 3rd Joint Civil Judge, Junior Division, Aurangabad. It is the case of petitioner that she has purchased 1 Hectare, 92 Are land from Gut No. 83 situated at Pachod (Ekod) Taluka and District Aurangabad, under a registered sale deed dated 05-02-1999 from legal heirs of Namdeo Ashru Kakade. Upon death of original owner Namdeo Ashru Kakade, from 1986 their names were appearing in ownership and cultivation column of 7/12 extracts under mutation entry bearing No.184. After purchase of the land, under mutation entry bearing No.331 petitioner's name started appearing in 7/12 extracts in ownership and cultivation columns. Some time later, in 2000 respondent / plaintiff's son purchased an area of 42 Are land from Gut No.83 from the petitioner / defendant under registered sale deed dated 02-06-2000. Thereafter, names of the petitioner and son of respondent/ plaintiff have been recorded in revenue record and the position continued till 2015.

3. In 2015, suit has been instituted by plaintiff/ respondent claiming that on 13-06-1979 he had purchased 1 Hectare, 50 Are land from original owner deceased Namdeo Ashru Kakade for a valuable consideration of Rs.2,000/- (Rs. Two thousand only) from his total holding of 1 Hectare, 92 Are in Gut

No.83 and accordingly, mutation entry had taken place bearing No.176.

4. According to respondent/ plaintiff he is continuously in possession of aforesaid 1 Hectare, 50 Are land of Gut No.83. As disturbance to the same has been caused around 2015, the suit ensued for declaration, injunction and cancellation of sale deed executed in favour of defendant/ petitioner. Along with the suit, application Exhibit 5 for temporary injunction had been moved.

5. Application Exhibit 5 came to be allowed by trial court observing that plaintiff is owner of suit land under a registered sale deed and was inducted into the possession of 1 Hectare, 50 Are land. Subsequent revenue record may not confer rights on defendant/ petitioner to suit property. Revenue record is merely made for fiscal purpose. Since the plaintiff/ respondent has purchased the land, injunction had been granted by the trial court.

6. Appellate court appears to have considered that the defendant / appellant has not been certain about her claims, since it has been claimed in written statement that entire land admeasuring 3 Hectare, 83 Are of Gut No.83 is owned and possessed by her whereas in appeal she claims to have purchased

only 1 Hectare, 92 Are land. Appellate court in respect of the revenue record for the years 2002 to 2011 has considered, land is not shown to have been cultivated. For the year 2011-2012, 70 Are land was not cultivated, Bajra crop was cultivated on 51 R land and cotton on 1 Hectare, 42 Are land. For the year 2012-2013 it is shown that Bajra crop was cultivated on 1 Hectare, 41 Are and cotton was cultivated on 2 Hectare, 42 Are land. Appellate court considered that contention of the defendant/ petitioner that she is cultivating land from 1986 till 2014, does not find support from the 7/12 extracts. As such, under the circumstances, appellate court thought it fit not to disturb order passed by trial court.

7. Learned counsel for the petitioner Mr. A. P. Bhandari states that, it has been placed on record that petitioner has purchased 1 Hectare, 92 Are land from Gut No.83 from legal heirs of deceased Namdeo Ashru Kakade as their names were appearing in ownership and cultivation column of 7/12 extracts under mutation entry bearing No.184 after death of Namdeo Ashru Kakade. Even thereafter, plaintiff/ respondent's son has purchased 42 Are land from present petitioner / defendant considering her to be owner of 1 Hectare, 92 Are land. The record does not depict in any way after 1979 despite mutation entry No. 176, plaintiff had

ever taken any efforts to assert his title and right to property or had been in possession of property. What is germane to be considered is possession rather than the rights of the parties. Revenue record not even by semblance refers to possession of the plaintiff/ respondent. From 1986 continuously without any interruption legal heirs of deceased Namdeo Ashru Kakade have been shown owners in possession of 1 Hectare, 92 Are land. After about a 13 years whole of aforesaid land had been sold to present petitioner/ defendant. Son of the plaintiff/ respondent has purchased 42 Are land from 1 Hectare, 92 Are land purchased by the petitioner.

8. In the circumstances, there is no proper application of mind to the facts and the aspects which are required to be considered in an application for temporary injunction. The decision rendered by the trial court has been erroneous on facts and in law. Appellate court as well, according to him, has not applied the proper scale of appreciation to the material on record. Both the courts primarily had got overwhelmed by a claim on the basis of prior transaction rather than factual situation on the date of the suit about possession. He submits that, rights to the property with reference to title being claimed is one thing and considerations for

decision on application temporary injunction are quite another. It ought to be considered with reference to possession. Trial as well as the appellate courts have committed error in not appreciating the matter in proper perspective.

9. Countering aforesaid submissions, Mr. R. K. Jadhavar, learned advocate appearing for plaintiff/ respondent submits that, plaintiff/ respondent has a strong and rightful claim to the property. He submits, it cannot be disputed that the property has been purchased under a registered sale deed and title thereupon has passed onto the plaintiff/ respondent. There has been consequent mutation entry bearing No.176 recorded in relevant revenue registers. He submits that, may be some of revenue record has not taken note of the same, however, that does not alter the factual situation about possession had been delivered to the plaintiff/ respondent under the registered sale deed. In the circumstances revenue record which are made for fiscal purposes shall not overwhelm the factual position about the possession.

10. He submits that much ado has been made out about 42 Are land purchased by plaintiff/ respondent's son. He submits that 42 Are land which is claimed to have been purchased by son of the

plaintiff/ respondent is the remainder land of deceased Namdeo Ashru Kakade in Gut No.83. The original owner Namdeo Ashru Kakade had a land holding of 1 Hectare, 92 Are in Gut No.83. Thus, 1 Hectare, 50 Are land under the registered sale deed has been owned by plaintiff since 1979 and rest of area of land, 42 Are is now owned by the son of the plaintiff, after sale deed has been executed around 2000 in his favour by present petitioner/ defendant.

11. He submits that in aforesaid situation, petitioner / defendant cannot stake claim to any piece of land of deceased Namdeo Ashru Kakade in Gut No.83, since the whole land under two sale deeds, one in 1979 and other 2000 has been purchased by respondent / plaintiff and his son respectively. He submits that, plaintiff had submitted affidavits of adjoining land holders showing that the plaintiff has been actually in possession of the land from 1979. He submits purchaser would not get better title than the vendor and in present case vendor of petitioner had no title to suit property at all. He submits what needs attention to is that while petitioner could not be in possession of major chunk of land purchased by them, they had chosen to alienate the portion not in possession of plaintiff's to the son as they were finding it difficult come in

possession of property. There had been no threat to plaintiff's possession till 2015. Revenue record cannot be relied on for possession and entries in the same were not by following due procedure.

12. Having heard the learned counsel as aforesaid, it emerges that observations of trial court while recording reasons at pages No.53 and 54 give indication of that the court had been overwhelmed by the registered sale deed in favour of plaintiff and that the same would be decisive for decision on temporary injunction application. Appellate court has almost treaded the same line. Appellate court purportedly has referred to certain 7/12 extracts for the period from 2002 to 2011, 2011-2012, 2012-2013. It has committed an error in appreciating that since cultivation of the whole of the land has not been depicted or for that matter there have been some discrepancies and/or deficiencies and injunction should issue against defendant. None of the courts has adverted to affidavits which are stated to be filed.

13. It is for the plaintiff to assert and produce material to support his claims. Errors in or discrepant revenue record in respect of the defendant, may not be able to discharge the plaintiff

from showing subsistence of requirements for granting of temporary injunction. Overall it appears that, the matter would require application of mind afresh looking at the factual and legal position. The orders are deficient of the consideration of the ingredients required for granting of temporary injunction and application of mind to the material on record. It further appears that, though it has been contended that there have been affidavits of adjacent land owners on record, yet the orders do not show that those have fallen for consideration of the court. It is expedient that the matter be sent back for reconsideration afresh by trial court, by granting opportunity to the parties concerned.

14. As such writ petition stands allowed. Accordingly the rule made absolute in the above terms. Both the impugned orders stand set aside. The temporary injunction application stands restored to its position as was subsisting on the date of the hearing of application.

15. It is made clear that observations in this under are not at all to influence decision making in the application and/ or the suit to be decided, those do not have any efficacy whatsoever. The application and/ or suit be decided on merits without getting

bogged down by this order.

16. Learned counsel for the respondent has referred to that the suit almost is ripe for hearing as evidence is being lead. In such case the suit may also be proceeded with expeditiously.

(SUNIL P. DESHMUKH, J.)

vjg/-