

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

WRIT PETITION NO. 11037 OF 2017

GOPAL UTTAMRAO DUBBEWAR
VERSUS
CHANDRAKANT MAROTRAO DAWARE

...
Advocate for Petitioner : Shri S.V.Kuptekar h/f Shri Salunke V.D..
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 12th September, 2017

Per Court:

1 The Petitioner is aggrieved by the judgment and order dated 07.07.2017 delivered by the Appellate Court by which Miscellaneous Civil Appeal No.24/2017 filed by the Respondent/original Defendant, challenging the grant of injunction by the Civil Court by the order dated 18.04.2017, has been allowed and the order granting injunction has been set aside.

2 The learned Advocate for the Petitioner has strenuously criticized the impugned order. He submits that the pleadings in the suit filed by the Petitioner would indicate that the Petitioner is in possession of the suit property. The Trial Court had granted him injunction in the nature of directing the Defendant not to obstruct the Plaintiff.

3 He further submits that the Appellate Court could not have

overturned the findings of the Trial Court unless there were strong reasons to do so. Merely because a second view is possible, the Appellate Court could not have interfered with an interlocutory order.

4 He has also drawn my attention to the eleven grounds raised by him in the memo of the petition.

5 Upon considering the submissions of the learned Advocate and upon going through the record available, it appears that the Appellate Court has noticed that the 7/12 extract placed on record, does not show the name of the Plaintiff in Column No.12 as being the possessor of the suit property.

6 The record also reveals that on 20.09.2016, the Tahasildar had directed the Revenue Inspector to carry out a spot inspection as regards the possession of the suit property. The report dated 05.10.2016 was submitted by the Revenue Inspector along with the spot panchanama dated 30.09.2016 and the statements of witnesses. The suit property, in the presence of the Panchas, was found to be in the possession of the Defendant and he has sown Soyabean and Tur Daal in the said suit property. The statements of the adjacent land owners indicate that the Defendant was in possession for the last 25 years.

7 Nevertheless, the suit is yet to be tried finally and the observations made by the Appellate Court would be at a prima facie stage. It cannot be doubted that the Trial Court, while deciding the Regular Civil

Suit, would consider the contentions of the litigating sides and the oral and documentary evidence, independently and would decide the said suit on its own merits.

8 Considering the above, I do not find that the impugned judgment could be termed as being perverse or erroneous. This Writ Petition being devoid of merit is, therefore, dismissed.

kps

(RAVINDRA V. GHUGE, J.)