

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

**WRIT PETITION NO.12377 OF 2017
WITH
WRIT PETITION NO.10970 OF 2017
WITH
CA/1594/2017 IN WP/10970/2017**

JUMAKHA AKILKHA
VERSUS
MAKHMURBEE JUMAKHA AND ANOTHER

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Advocate for Petitioner :Mr. Shaikh Md. Ibrahim Ismail
Advocate for Respondents : Mr. Shaikh Mujtaba Gulam
Mustafa

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CORAM : V.K. JADHAV, J.
Dated: November 09, 2017

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PER COURT :-

1. By Writ Petition No.12377 of 2017, petitioner-original plaintiff has challenged the order passed by the Trial Court below Exh.5 in Regular Civil Suit No.19/2015 confirmed by the learned Adhoc District Judge-2, Jalna by order dated 31.8.2017 in Misc. Civil Appeal No.49/2016.

2. Learned counsel for the petitioner-original plaintiff submits that, the petitioner-plaintiff is in possession of the suit land continuously and he is the owner thereof.

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Respondent No.1 is the first wife of the petitioner-plaintiff. It is the case of respondent no.1-original defendant that, the petitioner-plaintiff has partitioned the land and transferred 80 Gunthas of land to her and she thus claims title and possession over the suit land on the basis of such partition. Learned counsel submits that, concept of partition is unknown to the Mohmmedan Law and on death of a Mohammedan his estate devolves on his heirs who succeed to the estate as tenants in common specific shares. Learned counsel submits that, both the courts below have not considered this legal position and only on the basis of certain entries in the revenue record, rejected the application Exh.5 filed by the present petitioner-plaintiff seeking order of temporary injunction. Learned counsel submits that, such entries in revenue record does not create any title in respect of the land in dispute.

3. Learned counsel for the petitioner, in order to substantiate his submissions, placed reliance on following two judgments :-

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1. *Syed Shah Gulam Ghouse Mohiuddin and others Vs. Syed Shah Ahmad Mohiuddin Kamisul Qadri (dead) by his legal representatives and others reported in AIR 1971 Supreme Court 2184.*
2. *Amar Ahmad Khan and others Vs. Shamim Ahmed Khan and another reported in AIR 2012 Jharkhand 39.*

4. Learned counsel for respondents submits that, respondent no.1-defendant no.1 is the first wife of the petitioner. She has given consent to the petitioner for second marriage and accordingly, in lieu of the said consent, petitioner-plaintiff has transferred in her name land admeasuring 80R. On the basis of such transfer, Mutation Entry No.611 came to be sanctioned way back in the year 1991, and, since then, she is in possession of the suit land. Learned counsel submits that, due to old age, respondent no.1-original defendant no.1 is not in a position to cultivate the land and, therefore, she sold the said land to her real brother respondent no.2. Learned counsel submits that, even though, entries in the revenue record does not create any title in respect of the land in dispute, however, those entries can be relied upon to ascertain as to who was in possession of the

land in dispute on the date when name of that person had been entered in the revenue record.

5. On perusal of the orders passed by the courts below, it appears that, mutation entry no.611 came to be sanctioned way back in the year 1991 and the petitioner-plaintiff never challenged said entry till filing of the suit. It is true that, mere entry in the revenue record does not create any title in respect of the land in dispute, however, such entry can be relied upon to ascertain as to who was in possession of the land in dispute. In the instant case, name of respondent no.1-defendant no.1 entered in the revenue record in the year 1991. There are continuous entries thereafter. On the basis of such entry in the revenue record, prima facie I do not find any substance in the contention raised by the petitioner-plaintiff that there is only a paper arrangement and actual and physical possession remained with the petitioner-plaintiff. It is well settled that, while deciding the application seeking temporary injunction, a prima facie case is required to be considered alongwith balance

of convenience and irreparable loss likely to be caused to the parties.

6. I do not find any substance in this writ petition. Writ Petition is hereby dismissed. No costs.

7. In view of dismissal of Writ Petition No.12377/2017, nothing survives for consideration in pending writ petition No.10970/2017 and also in civil application. Thus, writ Petition No.10970/2017 and pending Civil application accordingly disposed off. No costs.

sd/-
(**V.K. JADHAV, J.**)

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aaa/-