

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

WRIT PETITION NO. 1553 OF 2016

1. RATISH S/O GHANSHYAM MASKE
AGE 36 YEARS, OCCUP. AGRIL &
BUSINESS, R/O PRERNA NAGAR,
AMBAJOGAI, TQ. AMBAJOGAI
DIST. BEED.
2. AHMED MOHIYODDIN S/O SD. KAISAR
AGE 47 YEARS, OCCUPATION : AGRIL.
& BUSINESS, R/O AMBAJOGAI,
AT PRESENT HOUSE NO. 8-1-364/51,
JANKI NAGAR COLONY, TOLI CHOWK,
HYDERABAD (A. P.)

.. PETITIONERS

VERSUS

1. RAJABHAU S/O JIJA CHALAK,
AGE 67 YEARS, OCCUP. AGRICULTURE,
2. SAMPATTI S/O RAMKRISHNA CHALAK,
AGE 64 YEARS, OCCUP. AGRICULTURE,
3. BANSIDHAR S/O RAMKRISHNA CHALAK,
AGE 55 YEARS, OCCUP. AGRICULTURE,

ALL R/O PATRUD, TQ. MAJALGAON,
DISTRICT : BEED

.. RESPONDENTS

Mr. G. K. Naik-Thigle, Advocate for petitioners

CORAM : SUNIL P. DESHMUKH, J.
DATE : 8th August, 2017

ORAL JUDGMENT :

1. Heard learned counsel Mr. Naik-Thigle appearing on behalf of petitioners - original defendants.

2. According to petitioners, competent authority of the Hyderabad State has given decision way back in 1956 that suit property is evacuee property. Respondents cannot be considered as legal owners and possessors of suit property. Petitioner no. 2 had filed application for heir-ship certificate before civil judge, junior division, Ambajogai which has been allowed and as such, petitioner no. 2 has become legal owner and possessor of suit property. It has been further referred to that petitioner no. 2 has sold out property to petitioner no. 1 and since then petitioner no. 1 has been cultivating suit land.

3. The thrust of the submissions of Mr. Thigle is that suit property is a property governed under the Administration of Evacuees Properties Act, 1950 which, according to him, is apparent from the document he has tried to place reliance on which is at page 42 of writ petition. Said document, according to him, indicates that administration of the property would be

governed by aforesaid enactment. He further refers to section 4 as also sections 18 and 46 of said enactment, submitting that the same is effective overriding other laws. He also refers to article 254 of the Constitution of India, submitting that aforesaid being central enactment would have precedence over other laws.

4. On this backdrop, he wants to submit that the two courts hitherto have erred in granting injunction against the present petitioners particularly having regard to that petitioner no. 1 has purchased the property from petitioner no. 2 for valuable consideration. He submits that the status and character which is claimed by the respondents – plaintiffs, in regular civil suit no. 228 of 2013 simplicitor for injunction, is litigated and litigation is pending. So is the case in respect of various orders passed in those proceedings.

5. He submits that a specific objection with regard to civil court's jurisdiction has been taken in the written statement and yet both the courts have by-passed the same and have not dwelt upon it. He, therefore, urges to consider that the orders passed by the civil court are untenable being without jurisdiction. He further submits that these orders would nullify the effect of the Administration of Evacuee Property Act, 1950.

6. Learned counsel has fairly referred to that issue with regard to jurisdiction based on pleadings has been framed and decided in favour of civil court's jurisdiction.

7. Perusal of impugned orders which are under challenge shows that the respondents who are plaintiffs in regular civil suit no. 228 of 2013 have claimed themselves to be tenants over suit property from even before 1950. They have also referred to that they are in possession of certificate of protected tenancy granted in favour of their predecessor. There has been no objection to the same thus far.

8. It appears, the respondents - plaintiffs have preferred application under section 6 of the Hyderabad Abolition of Inam and Cash Grants Act, 1954. The authority has accordingly held the present respondents to be in possession. The matter was taken in appeal and was transferred to the Collector. The appeal was allowed and the matter was remanded to Deputy Collector for enquiry again.

9. While Deputy Collector on remand of the matter had considered the property to be evacuee property, Tahsildar had accordingly allowed mutation in favour of petitioner no. 2, yet the respondents had filed appeal in respect of said entry and the

same is pending. In the meanwhile, sale deed came to be executed in favour of petitioner no. 1 by petitioner no. 2. Plaintiff's case is circumstances establish that was without possession. But on the basis of the same the petitioners are trying to obstruct respondents who have been cultivating suit land.

10. With reference to aforesaid, three points for determination as far as temporary injunction is concerned have been framed by the trial court viz. prima facie case, balance of convenience and irreparable loss being suffered by plaintiffs and been decided in favour of the plaintiffs-respondents herein under order dated 03-12-2013.

11. It appears that petitioners had challenged aforesaid order under miscellaneous civil appeal no. 21 of 2013 before the district court, Majalgaon. In the appeal as well, aforesaid points for determination had been framed. While deciding said appeal under judgment and order dated 27-04-2015, appellate court has considered that revenue entries in the form of 7 x 12 extracts initially in the name of predecessor of respondents-plaintiffs and subsequently in the name of respondents have been appearing continuously. *Namuna* no. 9 which is *inam patrak* shows the property to be *madadmash*. Plaintiffs

additionally, filed affidavit of witnesses to support their possession over suit land albeit appellate court has referred to revenue record and entry taken by *talathi* in favour of petitioner no. 1. As observed by trial court, the appellate court also considered that mutation entry in 7 x 12 extract concerns ownership in favour of petitioner no. 1, however, person in long continuous possession can protect his possession by seeking injunction against a person other than true owner and has referred to judgment of the supreme court in the case of *Pratapria N. Kothari vs. John Braganza*, reported in III (1999) CLTS-1 (SC) in which it appears to have been observed by the apex court that the owner of property can get back his possession only by resorting to the process of law.

12. The appellate court observed that perusal of documentary evidence on record would indicate that prima facie case, balance of convenience and third ingredient of irreparable loss go in favour of plaintiffs - respondents herein.

13. As issue with regard to jurisdiction had been framed and ruled in favour of jurisdiction to civil court, the scope of writ petition cannot be diverted to the jurisdiction again with reference to submissions of learned advocate as writ petition primarily objects to temporary injunction issued.

14. While the two courts have, referring to the documentary evidence on record, considered that all the three ingredients are in favour of the respondents-plaintiffs, there is hardly any reason to upset such decision.

15. Writ petition, as such, is not entertained and is dismissed.

SUNIL P. DESHMUKH,
JUDGE

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