

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

920 WRIT PETITION NO. 14004 OF 2017

SK. MUKHTAR SK. NOOR ALI
VERSUS
THE COLLECTOR, NANDED AND OTHERS

...
Advocate for Petitioner : Mr. S. G. Magre, h/f Mr. M. D. Godhamgaonkar.
AGP for Respondent : Mr. P. N. Kutti.
...

CORAM : **V. K. JADHAV, J.**
DATE : 05th December, 2017.

ORDER:

. I find no substance in this writ petition. The Petitioner / original Plaintiff has instituted Regular Civil Suit No.356 of 2015 for declaration that the decree passed in Regular Civil Suit No.82 of 1992 dated 30th March, 1994 in respect of the suit property as null and void and not binding on him and further declaration of the ownership in respect of the suit property and also for recovery of possession (Survey No.200 corresponding to Gut No.423-1) and also for decree of perpetual injunction. The Petitioner / Plaintiff has also filed an application Exhibit 26 for issuance of temporary injunction under Order IXL Rules 1 and 2 of the Code of Civil Procedure. The Trial Court has rejected the said application vide order dated 15th December, 2016 below Exhibit 26. Being aggrieved by the same, the Petitioner /

Plaintiff has preferred Miscellaneous Civil Appeal No.1 of 2017 before the District Court, Nanded and the learned District Judge-3, Nanded by judgment and order dated 1st August, 2017 dismissed the said appeal.

2 It appears from the pleadings of the parties that the then Secretary of Respondent Nos.6 and 7 had purchased the suit property from the forefathers of the Petitioner / Plaintiff under the registered sale-deed executed in the year 1968. On the basis of the said sale-deed, the institute has carried out certain construction over the suit property and also instituted Regular Civil Suit No.82 of 1992 against the forefathers of the Petitioner / Plaintiff for decree of perpetual injunction in respect of the suit land (Gut No.423-1 situated at village Mantha, Taluka Hadgaon, District Nanded) to the extent Pardi No.1 2 Acres 24 Ares and Pardi No.2 1 Acre 24 Ares. Both the Courts below have observed that the Petitioner / Plaintiff has no independent right to claim over the suit property, but he is claiming the ownership over the same as it is his ancestral property. Consequently, the judgment and decree passed by the Civil Judge Junior Division, Hadgaon in Regular Civil Suit No.82 of 1992 is *prima-facie* binding on the Petitioner / Plaintiff so also the sale-deed executed in respect of the suit property way back in the year 1968. *Prima-facie* it also

appears that Defendant Nos.6 and 7 are the owners in possession of the suit property. The Petitioner / Plaintiff has failed to make out the *prima-facie* case. The balance of convenience also does not lie in his favour. In view of the same, I do not find any substance in this writ petition. The writ petition is accordingly, dismissed. No costs.

[V. K. JADHAV, J.]

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