

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12691 OF 2016
(Jindasahdeb s/o Fakir Mohammad Vs. Jahiroddin Usman Sayyad
and others)

Mr.B.R.Warma, Advocate for the petitioner.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 07/06/2017

PER COURT :

1. The petitioner is aggrieved partly by the order dated 03/01/2015 passed by the Trial Court by which his application Exhibit 5 in RCS No.178/2013 has been partly allowed. The petitioner is also aggrieved by the judgment of the Appeal Court dated 06/10/2016 by which M.C.A. No.84/2015 has been dismissed.

2. Mr.Warma, learned Advocate for the petitioner has strenuously criticized the impugned orders. He submits that defendant Nos. 3 and 4 have been directed not to dispose of the suit property and refrain from alienating or creating third party interest in the said property till the suit is decided. Grievance is that the petitioner/ plaintiff is in possession of the suit property and as such the Trial Court should have injuncted the defendants from creating any hurdle

or causing interference in his peaceful possession.

3. Having considered the submissions of the learned Advocate for the petitioner, it needs mention that the issue of Gift Deeds mentioning the delivery of possession is subject matter of the suit. Though the petitioner claims that the suit property is in his possession, the revenue record indicates that defendant No.3 is in possession of the suit property. The revenue record has not been challenged by the petitioner for a long time.

4. In the plaint, the plaintiff and his father have contended that they are residing far away from the suit property. An affidavit is filed stating that they are cultivating the suit property. Father of the petitioner/plaintiff has not filed any affidavit so as to canvass that the suit property is in their joint possession and both son and father are cultivating the property.

5. Considering the fact that the revenue record indicates the possession of defendant No.3 after the property is mutated in his name in 2008, I do not think that at this interlocutory stage in the trial, possession could be delivered to the petitioner and as an interim measure, the petitioner could be permitted to cultivate the

suit property.

6. Considering the above and the fact that the suit property is secured by the order dated 03/01/2015 passed by the learned Trial Court, the impugned orders cannot be termed as being perverse or erroneous. This petition, being devoid of merit, is therefore, dismissed.

7. Litigating sides are at liberty to move the Trial Court for expeditious hearing of the suit.

(Ravindra V.Ghuge, J.)