

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 275 OF 2017

1. Punjaram s/o Bhanudas Dange
age 51 years, occ. Agriculture
r/o Lohgaon, Tq. Paithan,
Dist. Aurangabad.
2. Balu s/o Bhavrao Jadhav
(Dead) Through LRs
 - 2-A) Sanjay s/o Balu Jadhav
age 54 years, occ. Agriculture
r/o Mawasgavan, Tq. Paithan
Dist. Aurangabad.
 - 2-B) Vilas s/o Balu Jadhav
age 51 years, occ. Agriculture
r/o Mawasgavan, Tq. Paithan
Dist. Aurangabad.
 - 2-C) Suman w/o Balu Jadhav
age 60 years, occ. Household
r/o Mawasgavan, Tq. Paithan
Dist. Aurangabad.
3. Shaikh Rasool s/o Sk. Kareem
age 55 years, occ. Agriculture
r/o Mawasgavan, Tq. Paithan
Dist. Aurangabad.

Petitioners

Versus

1. Uttamk s/o Shankar Uthape
(died) through LRs
 - A. Laxmibai w/o Uttam Ithape
age 70 years, occ. Agriculturist
r/o Lohgaon, tq. Paithan,
Dist. Aurangabad.
 - B. Babasaheb s/o Uttam Ithape
age 46 years, occ. Agriculturist

r/o Lohgaon, Tq. Paithan
Dist. Aurangabad.

C. Subhash s/o Uttam Ithape
age 46 years, occ. Agriculturist
r/o Shivrai, Tq. Gangapur
Dist. Aurangabad.

D. Raju s/o Uttam Ithape
(Dead) Through LRs

D-1) Vithal s/o Raju Ithape
age 20 years, occ. Agriculturist
r/o Lohgaon, Tq. Paithan
Dist. Aurangabad.

D-2) Janabai wd/o Raju Ithape
age 41 years, occ. Agriculturist
r/o Lohgaon, Tq. Paithan
Dist. Aurangabad.

E. Kalyan s/o Uttam Ithape
age 43 years, occ. Agriculturist
r/o Lohgaon, Tq. Paithan
Dist. Aurangabad.

F. Arun s/o Uttam Ithape
age 41 years, occ. Agriculturist
r/o Lohgaon, Tq. Paithan,
Dist. Aurangabad.

Respondents

Mr. Zia Ul Mustafa, advocate for the petitioners
Mr. D.R. Kale Patil, advocate for Respondents.

CORAM : S.B.SHUKRE, J.

DATE : 30th January, 2017

ORAL JUDGMENT :

1 Heard. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

2 Petitioners, being aggrieved by the order passed by learned District Judge-12, Aurangabad, on 20.10.2016 in Misc. Civil Appeal No.109/2015, thereby issuing temporary injunction against petitioners, has filed present writ petition.

3 It is the contention of learned Counsel for petitioners that the receipt, showing payment of Government charges for temporary cultivation of disputed land, is false and ought not to have been relied upon by the learned District Judge. He submits that it is an admitted position that cause of action for the suit arose on 15.02.2015, whereas, the payment receipt is of the date 16.02.2015 and suit is filed on 17.02.2015. According to him, all these circumstances would show that a false record has been created to grab the land from petitioners who are in possession of the disputed land on the basis of agreement entered into between them and original owner i.e. deceased Respondent No.1, for 99 years.

4 This all has been disputed by the learned Counsel for respondents, who submits that the payment receipt is genuine. Petitioners have not shown any better claim to the disputed land as there is nothing on record indicating that the petitioners had paid any Government charges.

5 On going through the order impugned in this petition as well as facts admitted by the parties, I find that there is substance in the argument of learned Counsel for respondents and there is no merit in the argument of learned Counsel for petitioners. It can be seen from the paper book that it is an admitted position that deceased Respondent No.1 was the original owner from whom the disputed land, called “tank bed” land, was acquired by the Government. If it is the case of petitioners that they are in possession of this land on the basis of the agreement, petitioners ought to have submitted their respective claims to the Government for preferential allotment of this land to them and showing their willingness to pay the Government charges. However, admittedly, no document in this regard, has been placed on record by the petitioners. Admittedly, there is also no payment receipt filed on record by the petitioners. I find that there is a payment receipt placed on record by the Respondents. Only because no Gut number has been mentioned in this receipt, it would not mean straightway that the payment receipt does not pertain to the disputed land allotted for temporary cultivation to the respondents.

6 As regards the contention that the cause of action arose prior to issuance of payment receipt, I must say that this requires consideration by the trial Court. But, it would also not mean at this stage, that the respondents do not have any *prima facie* case in their favour. It is quite likely that the allotment might have been made much earlier and the payment might have been made after some time and during interregnum, alleged resistance to the temporary cultivation by respondents might have arisen.

This is the reason why I would only say, at this stage, that the contention, that payment receipt is a false document, cannot be accepted straightway and it would require consideration on merits of the case. In the circumstances, I find that the respondents have succeeded *prima facie* in showing that they have better claim to the disputed land so far as its temporary cultivation is concerned. Accordingly, I see no illegality or perversity in the impugned order.

7 Learned Counsel for petitioners submit that the learned District Judge ought not to have considered the document which was not placed before the trial Court. Learned Counsel for the petitioners is right in his submission. Ordinarily, in exercise of appellate jurisdiction, the appellate Court is not expected to place reliance on the documents which were not considered by the trial Court. But, the jurisdiction exercised in the matters of grant of injunctory reliefs, is equitable in nature and, therefore, when equity demands a Court to consider some material, which may have been placed before it for the first time and which may have bearing upon the dispute between the parties, the appellate Court would be justified in these circumstances to do so. Besides this, while examining the legality or correctness of the impugned order in exercise of extraordinary jurisdiction of this Court, it is not necessary that every error of law should be corrected as long as it does not result in miscarriage of justice. This is a case where petitioners have failed to establish *prima facie* their better claim to the disputed land and, therefore, I do not see that the error, so committed by the learned District Judge, has resulted in miscarriage of justice.

8 In the circumstances, I find no merit in the writ petition and same deserves to be dismissed.

9 Writ Petition stands dismissed with costs. Rule discharged.

S.B.SHUKRE
JUDGE

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