

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9810 OF 2017

1 Prasad Shankar Thorat
Age : 42 years, Occ.: Agriculturist
Residing at Bahe, Tal. Walwa,
District Sangli

2 Amrut Shankar Thorat
Age : 40 years, Occ.: Agriculturist
Residing at Bahe, Tal. Walwa,
District Sangli.

3 Nandini Balaso Patil
Age : 45 years, Occ.: Housewife
Residing at Biur, Tal. Shirala,
District Sangli

4 Vijaya Shankar Thorat
Age : 70 years, Occ.: Household
and agriculturists.
Residing at Bahe, Tal. Walwa,
District Sangli.

.... Petitioners

Vs.

1 Kiran Bhausahab Thorat
Age : 50 yrs., Occ.: Agriculturist

2 Pradeep Bhauso Thorat
Age: 48 yrs., Occ.: Agriculturist

3 Shobha Bhaskar Patil
Age : 47 yrs., Occ.: Household

4 Sau. Parvati Sudhakar Patil
Age : 45 yrs., Occ.: Household

All residing at Nerle, Tal. Walwa,
District Sangli

.... Respondents

Mr. Bhushan Walimbe, for the Petitioners.

Mr. Gauraj Shah alongwith Mr. Umesh Waghmare i/by Ms. Sonali B. Patil for the Respondents.

Coram : Smt. Sadhana S. Jadhav, J.

Date : 8th November, 2017

JUDGMENT :

1 Heard the respective Counsel. Rule. Rule made returnable forthwith with the consent of the parties.

2 The petitioners herein, being aggrieved by the judgment and order dated 3rd August 2017 passed by District Judge-I, Islampur in Miscellaneous Civil Appeal No. 21 of 2017 have approached this court by way of this writ petition.

3 The present petitioners happen to be the original defendants in Regular Civil Suit No. 104 of 2017, which was filed by

the respondents herein before the Court of Civil Judge, Senior Division, Islampur under Section 38 of the Specific Relief Act. The dispute between the parties pertains to three agricultural lands bearing Gat nos.1400, 1434 and 789 at Mauje Bahe, Taluka Walwa, District Sangli. The plaintiffs therein had prayed for perpetual injunction against the present petitioners. The plaintiffs had also filed an application under Order 39, Rule 1 of the Code of Civil Procedure. By an order dated 13th February 2017, the petitioners herein were directed to maintain status-quo of the suit property till 21st February, 2017. By an order dated 7th March, 2017, the application filed by the plaintiffs seeking temporary injunction during the pendency of the suit was granted.

4 The applicants herein had filed their reply to the application under Order 39, Rules 1 and 2 CPC. The petitioners had specifically denied the allegations and had specifically stated that one Hausabai Balwant Thorat was the original land-lady. The grandfather of the defendants was cultivating the said agricultural lands for Hausabai. That their names were mutated in 7/12 extract as protected tenants and the said entries continued further. That they were declared as deemed purchasers on the Tiller's day i.e. 1st April, 1957. Hausabai had expired on 6th July, 1978. She had no legal heirs. It was also contended that Kashibai was the first wife of Balwant Thorat. They had no issue. After her demise, Balwant had

got married to Sundarabai. She also had no issue and therefore during the lifetime of Sundarabai, Balwant had got married to Hausabai and they had no issues. After the demises of Balwant Thorat, Sundarabai had adopted Ramchandra. Bhauso Dnyanu Patil claimed to be the adopted son of Sundarabai. There were several litigations between Hausabai and her adopted son, Ramchandra. Adoption deed was declared as null and void. The respondents herein are the sons of said Bhauso Dnyanu Patil. It was also contended that the petitioners herein in connivance with the officers of the Revenue department had mutated their names in the revenue records in 2010 i.e. after demise of Hausabai. It was the case of defendants/present petitioners that they have been in continuous possession of the said agricultural lands and have been taking crops like sugarcane and have supplied the sugarcane to the sugar factories. They have developed the agricultural lands. That in fact on 3rd February 2017, when they were in the process of loading the sugarcane in the tractor, the plaintiffs had caused obstruction and the matter was reported to the police station.

5 Being aggrieved by the order dated 7th March, 2017, the petitioners herein had filed Miscellaneous Civil Appeal No. 21 of 2017 before the District Court at Islampur. By the judgment and order dated 3rd August, 2017, the said appeal was dismissed by the District Court, thereby confirming the order dated 7th March, 2017. Hence, this writ petition.

6 It is a matter of record that Shankar Bhau Thorat i.e. father of the petitioners had filed Regular Civil Suit No. 11 of 1988 in the Court of Joint Civil Judge, Junior Division, Islampur for injunction and possession against the respondents herein. It was specifically contended that the father of the plaintiff was cultivating the land as a tenant of Hausabai Balwant Thorat. That the father of the plaintiff i.e. the grandfather of the petitioners had applied to the tenancy court offering to purchase the suit land and decide the purchase price of the suit property. During the pendency of the proceedings before the tenancy Court, the respondents had got their names entered into the 7/12 extract. The said suit was decreed in favour of the plaintiff by the judgment and order dated 11th August, 1995. Being aggrieved by the said judgment and order, Kiran Bhauso Patil had filed Regular Civil Appeal No.441 of 1999, which was dismissed by the District Judge vide judgment and order dated 22nd November, 2005. The said judgment was not challenged, hence the findings recorded by the Civil Judge, Junior Division in Regular Civil Suit No. 11 of 1988, further confirmed in Regular Civil Appeal No.441 of 1999 have attained finality. It is also contended by the learned counsel for the petitioners that in the course of hearing of the application below Exhibit 6, the petitioners herein had filed the receipts issued by the sugar factory to demonstrate that the petitioners had cultivated sugarcane in the said lands and had supplied sugarcane to the sugar factory.

7 It is also a matter of record that the petitioners have their residential house in gat no.1400. In the year 2014, the said house was damaged due to heavy rains. The panchanama was recorded by the Government of Maharashtra and the petitioners were given compensation by the Government of Maharashtra. This would be sufficient to indicate that the petitioners are in possession of the suit lands and are residing in the suit property. It appears from the records that both the Courts below have failed to consider the revenue records which showed the possession of the grandfather of the petitioners, thereafter the father of the petitioners and in fact the respondents had got their names mutated without following due procedure of law. In fact, the respondents have failed to establish their locus as heirs of the landlady.

8 Learned counsel for the petitioners submits that the respondents herein have not in any way sought a declaration that the petitioners are not protected tenants. That the respondents are only placing implicit reliance on the fraudulent entries in the 7/12 extract. That for deciding the application under Order 39, Rules 1 and 2, it would be incumbent upon the Court to ascertain the possession of the parties on the date of filing of the suit.

9 Upon perusal of the records and upon considering the submissions of the respective counsel, this Court is of the opinion

that the impugned orders dated 7th March, 2017 confirmed by the District Judge vide Judgment and order dated 3rd August, 2017 deserve to be quashed and set aside. Hence, the petition is allowed. The impugned orders dated 7th March, 2017 confirmed by the District Judge vide Judgment and order dated 3rd August, 2017 are hereby quashed and set aside.

10 Rule is made absolute in above terms. The Petition stands disposed of with no order as to costs.

(Smt. Sadhana S. Jadhav, J)