

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

904 WRIT PETITION NO. 2545 OF 2018

YUVRAJ GANGAJIRAO TAHSILDAR
VERSUS
SARALA DIGAMBAR TAHSILDAR AND ANOTHER

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Advocate for Petitioner : Mr. Ankush N. Nagargoje.

Advocate for Respondent No.1 : Mr. R. L. Kute, h/f Mr. V. R. Dhorde.

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CORAM : **V. L. ACHLIYA, J.**
DATE : 11th April, 2018.

ORDER:

. By this petition filed under Article 227 of the Constitution of India, the Petitioner has challenged the concurrent finding of facts recorded by the Courts below in rejecting the application Exhibit-6 i.e. the application moved for seeking temporary injunction.

2 Heard the learned counsel for Petitioner and the learned counsel for the Respondent No.1.

3 Perused the impugned orders and the documents as referred and relied by both the parties in support of respective submissions.

4 On due consideration of submissions advanced, I am of the view that the impugned orders call for no interference in exercise of writ jurisdiction under Article 227 of the Constitution of India. The orders passed are reasoned and based upon due consideration of rival pleadings and the documentary evidence placed in support of the respective contentions. Although it is argued that the orders passed by both the Courts below are perverse, I do not find any perversity in the orders passed. The documents as referred and relied by both the sides have been duly considered while dealing with the contentions raised by the Petitioner as well as the Respondents before the Trial Court. The Petitioner is claiming that he has entered into an agreement of sale to purchase the suit land for the consideration of Rs.1,25,000/- and paid Rs.25,000/- as earnest money (Essar). The sale-deed was to be executed on or before 30th June, 2010 on receipt of balance amount. In the year 2011, the Respondents have extended the time to execute the sale-deed. In spite of assurance given to clear the dues of the bank towards the loan secured by the respondents by creating charge over the suit land, the respondents have failed to perform their part of contract. It is the contentions of the Petitioner that he was put in possession of the suit land on the date of execution of agreement of sale and since then he is in continuous possession of the

suit land. It is further contended that the Petitioner is personally cultivating the land and also secured subsidy for installing the drip irrigation system in the suit land. It is argued that though the Petitioner was cultivating the land, his name was not shown in the crop statement and therefore, the Petitioner was constrained to make application before revenue authority for recording his name in revenue record. The application was filed in the year 2014. It is contended that the documents as referred and relied by the Petitioner in support of his contention that he is physically in possession of the suit land, same were not considered by the Trial Court as well as the Appellate Court.

5 On the other hand, the learned counsel for respondent supported the orders passed by the Trial Court as well as the Appellate Court. It is contended that the agreement of sale as claimed by the Petitioner, is in fact, sham and bogus document, got executed by the Petitioner while advancing the loan. The Respondents are all the while in physical possession of the suit land. It is contended that the crop statements from the year 2009 and onwards, reflect the respondents as owner as well as person in physical possession and occupation of suit land. In support of the submission, the learned counsel has referred and relied upon the 7/12 extracts and the crop

statement from year 2009 and onwards. It is further pointed out that the application made by the Petitioner to record his name in the crop statement was turned down by the Talathi vide communication made to the Petitioner on 21st September, 2016. It is further contended that the order to record the name of the Petitioner in the revenue record, was also set aside by the competent authority.

6 In counter to the submissions advanced, the learned counsel for Petitioner submits that the Petitioner has preferred an appeal against both the orders and the same is pending before the revisional authority.

7 In my view, the impugned orders call for no interference in exercise of writ jurisdiction. The order passed by the Trial Court as well as appellate Court are well reasoned and passed after due consideration of rival contentions as well as the documents relied by both the parties in support of their respective contentions. There is no force in the submission of the learned counsel for Petitioner that the Trial Court has not considered the documents as referred and relied by the Petitioner in support of his case. In paragraphs 12, 13 and 14 of the order, the documents as referred and relied by both the sides have been duly considered by the Trial Court. The observations made by

the Trial Court read as under:

“12. Conversely, Non applicants have filed some documents to show their possession over the “Suit Property”. The 7/12 extract, dated 05th October 2013, shows that, the “Suit Property” standing in name of Non applicant No.1. It also shows that, in the year 2012-13, she, (Non applicant No.1), has sown Banana crops in the “Suit Property”. From the 7/12 extracts filed on record, it further appears that, since 2002 till 2012-13, the *pik-pera* (Crops) is standing in her name. From the documents, it also appears that the governmental dues, taxes etc.. are paid by the Non-applicant. In this regard, the Non applicant has relied upon a judgment of Hon'ble Calcutta High Court, passed in the case of **Shailendra Nath Ghosal Vs. Ena Dutta, reported in 1973 CALCUTTA 128**, in which the Hon'ble Calcutta High Court, in para No.8 has held as under ;

“It is not well settled principle of law that when the property stands in the name of a person, the presumption is that he is the owner of the property and anybody who alleges that he is not the owner, must prove the same”.

13. Moreover, to prove the possession over “Suit Property”, the Non applicants have filed affidavits of Non-applicant No.1 as well as other persons, Shri. Totaram Tanga, Muktabai Totaram and Kashinath Sahadu amongst others. They, in their affidavits, have

stated that the Banana crops, in the "Suit Property", are planted by the Non-applicants. All these persons are labor and work in the field. There is no occasion for them to be deposed against the applicant. The oral evidence adduced by the Non-applicants is corroborated by documentary evidence. Besides, the authorities discussed in this order, the Non-applicants have also relied upon the other authorities in order to strengthen their defense. However, considering the peculiar facts and circumstance of the case those authorities are not useful to the Non-applicants.

14. In regards to drip irrigation system, the applicant has contended that, he has installed a drip irrigation in the "Suit Property" and developed it in order to take more crops. The Cost of the said irrigation system is shown to be Rs.1,84,726/-. On 01/05/2013, the Non-applicants came to the "Suit Property" and tried to destroy the drip irrigation system by cutting and dismantling the pipes, capillaries and other accessories. The applicant has also filed on record the payment receipt of drip irrigation appliances from Sadguru Drip Irrigation, Bhadgaon. However, there is another letter issued by proprietor of Sadguru Drip Irrigation, Bhadgaon stating therein that he had not given Drip irrigation appliances for the "Suit Property". He, by subsequent letter, has reversed his version. He has not come before the court and filed his affidavit. Further, for Banana plantation in "Suit Property", the normal drip materials would not cost that much amount.

Therefore, at this stage, the letter of him of giving drip irrigation appliances to applicant can not be relied upon. The another document filed by the applicant is letter of an agricultural officer. In this regard, it is to be noted here that, the Agriculture officer had no *locus-standi* to issue the letter. Further, the Non applicants have filed the documents on record from which it *prima facie* appears that, there are so many complaints, regarding non performing duty, against the Taluka Agriculture Officer. In a public meeting, held in the presence of respected persons, it appears that a resolution to remove him (Taluka Agriculture Officer) from his service, owing to serious allegations, was passed. Therefore, at this stage, the letter does not *prima facie* appears to be genuine. The applicant has filed the photos of alleged destruction. The Non applicants have denied this version. As far as, photographs are concerned, it is necessary to state here that, those do not show the possession of applicant over the "Suit Property". Further, it is also not clear from the said photos from which place/field those photographs were taken. It is also not clear that, who had taken and when they were taken. The concerned photographer has not come forward to the court and filed affidavit to substantiate the applicants version."

8 In the light of overall facts of the case and there is nothing to show that the impugned orders are perverse, arbitrary, no case is

made out to invoke supervisory jurisdiction under Article 227 of the Constitution of India. While exercising the power under Article 227 of the Constitution of India, this Court is not supposed to deal with the case as if deciding the case as a Court of appeal. The matter needs to be examined from a limited scope whether the Court below or the authority below have acted in gross violation of the provisions of law and passed the order resulting into miscarriage of justice. No such case is made out. I am therefore, not inclined to entertain the writ petition. The writ petition is dismissed.

9 In view of the facts that the suit is pending since 2013, the Trial Court is directed to expedite the hearing of the case and decide the suit as expeditiously as possible preferably within a period of one year from the date of communication of the order.

10 It is clarified that the observations as made above are made for the limited purpose of deciding this petition and same shall not be treated as observations made by this Court as to the merit of the case.

[V. L. ACHLIYA, J.]