

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3816 OF 2016

Govindrao Kerebaji Deshmukh
Age 60 Years, Occ. Agriculture
R/o Mugat, Tq. Mudkhed,
District Nanded.

..Petitioner

Versus

1.Nandaji Champati Kalyane
Age 30 years, Occ. Business,
R/o Mugat, Tq. Mudkhed,
District Nanded.

2. Madhav Gulabrao Bhong,
Age 30 Yeas, Occ. Business
R/o Behind Amarnath Hospital,
CIDCO, Nanded.

..Respondents

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Advocate for Petitioner : Shri Narvade Patil R.B.
Advocate for Respondents : Shri Kale G.D.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 08, 2018

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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioner is aggrieved by the order dated 9.7.2015, passed by the trial Court, by which, the application of the petitioner / plaintiff seeking temporary injunction under Order XXXIX Rules 1 and 2 of the CPC has been rejected. The petitioner is also aggrieved by the judgment and order dated 21.11.2015 passed by the appellate Court, by which, MCA No.52 of 2015 has been rejected.

5. I have considered the strenuous submissions of the learned Advocate for the petitioner and the learned Advocate on behalf of the respondents, who are original defendants 1 and 2.

6. The issue raised by the petitioner is as regards grant of injunction and protection on the basis of the petitioner being in possession of the suit land Gut No.333 and on the basis that the plaintiff is cultivating the said land admeasuring 68 ares. There is no dispute that the 7/12 extract indicates that the plaintiff was cultivating the land till 2015 and since defendant No.1 owner of the land has sold the same to defendant No.2, the 7/12 extract indicates the name of defendant No.2 as being in cultivation thereof.

7. The plaintiff has preferred his suit in 2015. No where has it

been pleaded as to what was the last crop that he has taken. A statement is made in the plaint that he used to take the cotton and soyabin crop as seasonal and non-seasonal crops. However, details of the last crop for the agricultural season 2014-15 have not been specifically set out in the plaint.

8. There cannot be a debate that an temporary injunction with regard to the agricultural land is normally on the basis of the possession of the claimant and the cultivation activity that has been undertaken. Affidavits were produced by both the sides before the trial Court, in which, Maroti Kalyane and Awadhoot Kalyane who claimed to be adjacent owners, have stated that the plaintiff was cultivating the land and is in possession from 2001. The defendant also produced affidavits of Shivanand Kalyane and Govinda Pawar, who claimed to be adjacent land owners. The trial Court noted, on the basis of the four boundaries of the suit properties that Shivanand's land is situated on the East side and Govinda's land is situated on the North side of the Suit property. They are the actual adjacent land owners, who have stated in their affidavits that defendant No.1 was earlier cultivating the land and presently, i.e. in 2015 defendant No.2, who has purchased the land from defendant No.1 has been cultivating.

9. The 7/12 extract for the years 2015 onwards indicate that defendant No.2 is now cultivating the land. It is in this backdrop that the trial Court as well as the appellate Court concluded on a prima facie appreciation of the documentary evidence that defendant No.2, who is a bonafide purchaser, has been put in possession by defendant No.1 and he has been cultivating the land.

10. Learned counsel for the petitioner strenuously submits that from about 1999-2000, the plaintiff was cultivating the land. Earlier he was cultivating land Gut No. 722, which belonged to the brother of defendant No.1. He was offered land Gut No.333 by defendant No.1 and he, therefore, gave up the land Gut No.727 and entered land Gut No.333. I, however, find that there are no pleadings to this effect in the plaint. No written document was prepared by the plaintiff while entering land Gut No.333.

11. Considering the above and in the face of concurrent findings, I do not find that the impugned orders could be termed as being perverse or erroneous. This petition being devoid of merits is, therefore, dismissed. Rule is discharged.

12. Since it is informed that the recording of evidence is likely to commence in RCS No.17 of 2015, the trial Court is requested to

decide the said suit as expeditiously as possible.

(RAVINDRA V. GHUGE, J.)

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