

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7271 OF 2018

LALJI SHANKAR JADHAV
VERSUS
SHOUNAK BAPUSAHEB JADHAV

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Advocate for Petitioner : Shri Arora Shyam C.
Advocate for Respondent : Shri Shinde A.D. h/f Jadhav Kailas B.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: October 24, 2018

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PER COURT :-

1 The petitioner / original defendant is aggrieved by the interlocutory order passed by the trial Court dated 10.7.2017, granting injunction to the plaintiff in RCS No.748 of 2014 and by the judgment of the appellate Court dated 19.4.2018, dismissing his MCA No.94 of 2017.

2 Learned counsel for the petitioner has strenuously criticized the impugned order. He draws my attention to the five grounds formulated in the memo of the petition. It is contended that the plaintiff has putforth a fictitious case that this petitioner has sold 60 Ares land to him out of the land admeasuring 1 Hectare 62 Ares, which is held and possessed by the petitioner. He has taken a stand that a nominal sale deed was executed since the petitioner had taken loan from the plaintiff.

akl/d

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It was not an outright sale and it was agreed by a re-conveyance deed that after the repayment of the loan, the plaintiff would return the 60 Are land to this petitioner. It is asserted that the petitioner continued to be in possession. The two sale deeds at issue carry different boundaries and therefore, the suit property cannot be identified even by the description in the plaint.

3 Shri Shinde, learned Advocate submits that pursuant to the sale deed dated 20.7.2009, the mutation entries are standing in the name of the plaintiff. The plaintiff has been put in possession. Entries in the 7/12 extract would clearly indicate that the revenue authorities have acknowledged the possession of the plaintiff. He is cultivating the land and is holding 60 Ares land in his possession. He further submits that the injunction granted would obviously be restricted to the 60 ares land that is in his possession. The mutation entries in favour of the plaintiff have been sustained upto the level of the High Court.

4 Considering that there are concurrent findings and in view of the fact that the plaintiff states that the injunction would be restricted only to the 60 Ares land and keeping in view that the suit has been instituted in 2014, I do not find any reason to cause an interference in this matter

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at this stage. It would virtually amount to deciding the rights of the parties and possession thereof. When the suit is pending and a period of about four and half years have lapsed, it would be appropriate to allow the trial Court to proceed with the suit on its own merits. Though the injunction granted would continue, the observations of both the Courts as well as this Court, to the extent of the injunction, shall be restricted and the trial Court would not be influenced by such observations made at the prima facie stage.

5 This petition is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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