

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8863 OF 2016

(Yeshwanta Yogaji Borade and others Vs. Drupati Laxman Khandare
and others)

Mr.P.R.Katneshwarkar, Advocate for the petitioners.

Mr.A.N.Sabnis h/f Mr.V.D.Gunale, Advocate for respondent Nos. 1 and
2.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 01/02/2018

PER COURT :

1. I have considered the strenuous submissions of the learned Advocate for the petitioners who seek to challenge, in part, the judgment and order dated 10/05/2016 in MCA No.3/2015 to the extent of refusal of injunction in respect of land S.No.72/1 admeasuring 7 hectre 78 R situated at village Bhendegaon, and the submissions of the learned Advocate appearing on behalf of the respondents.

2. This matter has been heard for more than one hour and with the assistance of the learned Advocates for the respective sides, I have gone through the voluminous record.

3. In so far as the grant of injunction by the Appellate Court in

favour of these petitioners to the extent of land S.No.72/2, which is the Western side portion out of Gat No.134 admeasuring 14 acres and 17 gunthas in village Bhendegaon, is concerned, it is not a matter of dispute as the original defendants have not challenged the said order by preferring a writ petition.

4. After perusing the entire record with the assistance of the learned Advocates, in the wake of the challenge to the refusal of injunction with respect to land S.No.72/1, it appears from paragraph No.29 of the impugned judgment that the Appellate Court did not grant injunction to the plaintiffs on account of the following observations :-

"it reveals from the order of the Nayab Tahsildar (Revenue) Basmat, dated 16/04/1979 that the application of the present defendants for restoration of S.No.72/1 admeasuring 19 acres 9 guntha, was allowed. It was further directed that the present defendants be put into possession of said land survey No.72/1. This clearly goes to show that the said application before the Nayab Tahsildar (Revenue) Basmat, was in respect of only S.No.72/1. It is important to note that the present plaintiff challenged the order of Nayab Tahsildar, before the Deputy Collector by way of Appeal No.79 TNC-A.167. It is important to note that , Deputy Collector, by order dated 31/01/1981, dismissed the appeal of the present plaintiffs and upheld the order of the Nayab Tahsildar (Revenue) Basmat."

5. It appears that the Appellate Court has mixed up the facts of Case No.85/TNC/A/32(1)/67 decided on 13/11/1987 by the Deputy Collector, Land Reforms, wherein all the plaintiffs in the present litigation were the appellants and who had succeeded as the appeal was allowed and the decision of the Nayab Tahsildar dated 16/04/1979 was set aside. So also, the order of the Tahsildar, Basmat dated 22/04/1988 in Sanchika No.88-ROR-65 also led to the recording of the names of these plaintiffs in the 7/12 extracts with regard to land S.No.72/1 in Gat No.134. The Appellate Court has mistaken these proceedings with those in Appeal No.79/TNC.A.167 as being the proceedings initiated by these plaintiffs. These plaintiffs are Balaji Yogaji, Yashwanta Yogaji and Jijabai Madhavrao. Yogaji Balaji was the respondent in case No.85/TNC. The said Yogaji Balaji had already passed away and his LR's were on record in Case NO.85/TNC. This mixing of the fact situation between Case No.85/TNC and Case No.79/TNC was probably on account of the similarity in the names of the plaintiff Balaji Yogaji with the other name Yogaji Balaji in Case No.79/TNC. The litigation in Case No.85/TNC was specifically with land S.No.72/1.

6. Considering the above, this petition is partly allowed and MCA

No.3/2015 is remitted to the learned Appellate Court, Basmat Nagar for re-hearing the parties on the basis of the relevant records available or that may be tendered upon remand in respect of land S.No.72/1. The conclusions of the Appellate Court in granting injunction in favour of the plaintiffs in the impugned order dated 10/05/2016 to the extent of land Survey No.72/2, which is the Western side portion out of Gat No.134 admeasuring 14 acres 17 gunthas of village Bhendegaon, is sustained. Needless to state, the litigating sides are permitted to address the Appellate Court only to the extent of whether injunction should be granted to the plaintiffs with Regard to Land Survey No. 72/1.

7. The litigating sides agree to appear before the Appellate Court on 23/02/2018. Formal notices need not be issued. If any of the documents placed before this Court alongwith this petition were not placed before the Appellate Court, the litigating sides are at liberty to do so on or before 17/03/2018. The Appellate Court shall decide MCA No.3/2015 as expeditiously as possible, and preferably on or before 30/06/2018 since the matter is remanded on a very short issue. Till the decision in the said appeal, the litigating sides shall not create any third party interest or charge on the land S.No.72/1.

(RAVINDRA V. GHUGE, J.)