

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 10597 OF 2018
IN WP/8127/2011

LAXMAN MUKINDA MADANE DECEASED LRS JIJABAI LAXMAN
MADANE LRS NAGARBAI VASANT SHENDGE AND OTHERS
VERSUS
SATISCHANDRA BHAGWANDAS LODHA AND OTHERS

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Mr. V.D. Salunke, Advocate with Mr. B.R. Sontakke Patil, Advocate
for applicants

Mrs. Rekha M. Mohale, Advocate h/f Mr. S.S. Choudhary, Advocate
for respondent no.1 in W.P.

Mr. Milind Patil, Advocate for respondent no.2 in W.P.

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CORAM : SUNIL P. DESHMUKH, J.
DATE : 10-09-2018

ORAL ORDER :

1. Heard learned counsel for appearing parties extensively.

2. The dispute is in respect of portion of land bearing survey no. 110, totally admeasuring about 20 *Acre* 24 *Guntha*, situated at Kallam in district Osmanabad. The predecessor of the present respondents, one Fatehchand had been owner and holder of said land. He was survived by two sons Bhagwandas and Kishanlal. Subsequently, Bhagwandas died and Satishchandra, his son, is respondent no.1 in present matter. Kishanlal is deceased

respondent no. 2 and his legal heirs are respondents no. 2A to 2D. Laxman is predecessor of present applicants. It is being pleaded on behalf of representatives of deceased Laxman that Laxman had been tenant of survey no. 110 admeasuring 20 *Acre* 24 *Guntha* and had been declared as owner to the extent of 13 *Acre* 21 *Guntha*, around 1970 pursuant to section 38(6) of the Hyderabad Tenancy and Agricultural Lands Act. It is contended that however that does not mean that tenancy over rest of 7 *Acre* and 3 *Guntha* had been discontinued and Laxman and his progeny continued to be tenants of said land. Since an area of about 3 *Acre* and 21 *Guntha* had been occupied by Ginning and Pressing factory, they purported to claim back possession of rest of 3 *Acre* 21 *Guntha* under proceedings initiated before the Tahsildar in 1990. In said proceedings, the Tahsildar had granted their claim to purchase 3 *Acre* 22 *Guntha* land as well as possession. Said order of Tahsildar was appealed from before the Deputy Collector by present respondents and the Deputy Collector had set aside the order passed by Tahsildar. However, along with setting aside the tahsildar's order, sale deeds effected by Laxman or his representatives in favour of third persons in respect of lands declared to their ownership, had also been set aside. As such, two revisions had been preferred; one by one of the purchasers from Laxman and/or their representatives

and the other by representatives of Laxman before the Maharashtra Revenue Tribunal. Maharashtra Revenue Tribunal had dismissed the revision filed by representatives of Laxman and had allowed the one filed by purchasers from Laxman and/or their representatives. Against decision in aforesaid two revision applications, writ petition no. 8127 of 2011 has been preferred by representatives of deceased Laxman, which is pending and in the same, parties were stated to be initially directed to maintain status-quo.

3. It is being submitted on behalf of respondents in present civil application, however, subsequently the writ petition itself had been dismissed for non-prosecution and, thereafter, although the writ petition had been restored, status-quo order has not been continued having regard to submissions on behalf of present respondents, which position appears to be contested on behalf of applicants.

4. Writ petition bearing no. 5990 of 2011 has been preferred by Satischandra Lodha against decision in revision by purchasers from Laxman and the same as well is pending. This is the situation on one hand in respect of pending writ petitions before this court.

5. On the other, it appears that a suit for partition and separate possession of various properties, inter-alia aforesaid land bearing survey no. 110 situated at Kallam, had been pending amongst heirs left behind by Fatehchand - the original owner of land. Said suit had been decreed. The decree has been put in execution.

6. Learned counsel for respondents in present civil application has adverted to that after having sent the precept to the Collector pursuant to section 54 of Code of civil Procedure, *darkhast* proceedings are declared to be disposed of in November, 2003.

7. The proceedings before the revenue authorities, as such, for partition according to decree in this suit continued and in said proceedings, certain events have occurred relevant for decision in civil application.

8. It is claimed that genesis of present civil application lies in notice dated 19-06-2018 issued to 43 persons in execution of decree in regular civil suit no. 13 of 1986 and in regular *darkhast* no. 60 of 2003, informing that the decree is to be complied with

and 04-07-2018 was the date fixed for the same. It is case of the present applicants, in response to the same, on 27-06-2018, on behalf of present applicants and one of the purchasers, objection to the notice had been taken.

9. The Tahsildar on 04-07-2018 has passed order giving symbolic possession to Prakash Lodha, subject to orders to be passed in writ petition no. 8127 of 2011 on 20-07-2018 and Mr. Lodha had further been directed not to deal with the property given in possession, till hearing of writ petition on 20-07-2018.

10. It appears that, this court under its order dated June 29, 2018, had condoned the delay in filing application for restoration and had subject to removal of office objections by 20-07-2018, the order passed by Registrar dismissing the writ petition, had been set aside, keeping open the question with regard to interim relief. The parties concur on that subsequent to the same, the writ petition had not been on board before the court.

11. Learned counsel for applicants Mr. V.D. Salunke submits that it is the case of present applicants that they are tenants over entire land area of 20 *Acre* and 24 *Guntha* and they

have become owners of 13 *Acre* 21 *Guntha* under the tenancy proceedings and they continued to be tenants over rest of 7 *Acre* and 3 *Guntha* of land. He further purports to claim applicants being tenants over the land, are in possession of land. He submits that, applicants being the tenants, provisions of Hyderabad Tenancy and Agricultural Lands Act would have primacy over the civil proceedings and possession of applicants cannot be disturbed save and except pursuant to the provisions under the Hyderabad Tenancy and Agricultural Lands Act, 1950. In support of his said submission, he purports to rely on decision of High Court in the case of *Rameshwar Bhuralal Sharma Vs. Vithal Sukhdeo Rathod and others* decided on 01-08-1974 = *AIR 1975 Bom C.R. 160*.

It is a case wherein property concerned, had been ancestral / co-parcenery property. A civil suit was filed for partition and separate possession amongst the members of Hindu family wherein the purchasers as well as two other persons namely Vithal and Laxman were parties. The suit for partition and separate possession had been decreed. Rameshwar, who had been purchaser from one of the members of family, had claimed apportionment of the land purchased by him to the share of his seller and accordingly had been prosecuting *darkhast* proceedings for possession. Possession, in execution of decree, had been

delivered to purchaser – Rameshwar. During *darkhast* proceedings, the collector had informed that physical possession of the field could not be given to the parties, as fields were subject to tenancy. Purchaser – Rameshwar, however, had filed an application for placing him in possession of the property and civil court had placed him in possession of the property. Vithal and Laxman had preferred proceedings under Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958, for possession of the disputed property. The tenancy naib tahsildar had allowed the proceedings initiated by Laxman and Vithal, declaring them to be tenants and being in cultivation and their dis-possession had been considered to be illegal. Against which, purchaser Rameshwar had filed appeal and the sub divisional officer had dismissed it. Revision was preferred by Rameshwar before Maharashtra Revenue Tribunal and the Tribunal had dismissed the revision. Thereafter, purchaser – Rameshwar was before this court and the Hon'ble single judge as well had considered that the challenge cannot be sustained having regard to primacy given the tenancy statute.

12. With the aid of aforesaid citation, learned counsel Mr. Salunke purports to contend that similar is the situation in present matter. While it has been informed by the Tahsildar that

symbolic possession is being given to Prakash Lodha and not actual possession it is weird, a subsequent notice has been issued to give actual possession of the land. He submits that having regard to that the applicants from long time are tenants over suit property and in possession, their long standing possession shall not be allowed to be disturbed. He, therefore, urges to allow the application.

13. During the course of hearing, learned counsel for applicants submits that while their right to own 13 *Acre* and 21 *Guntha* land has been granted by the Tashildar and said proceedings are resting in writ petition, the long standing possession about their right asserted to the concerned land deserves to be protected in the present matter. He submits that exigency had arisen since notice for handing over actual possession had been given, the Hon'ble High Court had to be moved in right earnest and in the circumstances, having regard to the surrounding circumstances, an order came to be passed by this court, protecting interest of applicants and the protection be continued.

14. On the other hand, learned counsel Mr. Milind Patil appearing for representatives of respondent no.2 submits that the civil application is based on a friable and very thin and hollow

substratum. He submits that there is no foundation for the claims made by the applicants and to submit present application. He submits that the factual background would rip open the incorrect and fallacious claims of applicants.

15. He submits that a reference is being made to a portion of land admeasuring 7 *Acre* 3 *Guntha*, to be tenancy land. Learned counsel submits that is absolutely baseless. There is no veracity in the same nor there is any evidence in respect thereof. He submits that while the proceedings originally by predecessors of the present applicants, had been initiated, claiming tenancy over 20 *Acre* and 24 *Guntha* land, referring to 7 *Acre* and 3 *Guntha* land is utilized for industrial purpose whereas the claim of land holder was that 20 *Acre* and 24 *Guntha* land is used for industrial purpose. It has emerged in said proceedings before tahsildar, that their claim about tenancy over the land survey no. 110 can be sustained only to the extent of 13 *Acre* and 21 *Guntha* and not beyond that.

16. As a matter of fact, he points out that appellate authority on 24-09-1962 had partially allowed the claim of predecessors of present applicants only to the extent of 13 *Acre* and 21 *Guntha*, declaring him to be owner and discarding claim over

rest of the land. He submits that perusal of said order which is annexed to the affidavit-in-reply to the civil application, shows that it is an admitted position by predecessor of present applicants that the oil mill has consumed an area of 7 *Acre* and 3 *Guntha* and that the predecessor of applicant had been cultivating rest of the land. In the circumstances, appeal had been allowed only to that extent about 13 *Acre* and 21 *Guntha*, declaring him to be the owner over said land. Appeal therefrom by the land holders Bhagwandas and Kishanlal had failed, endorsing that only 7 *Acre* and 3 *Guntha* land was used for factory purpose and remaining portion was in occupation of Laxman – predecessor of present applicants.

17. He submits that Maharashtra Revenue Tribunal had decided the case on 05-03-1965 and since then, neither predecessor of present applicants nor the applicants had staked any claim to 7 *Acre* and 21 *Guntha* land till 1990. He further adverts to that even in 1990, the applicants had not asserted at all that they were ever in possession of disputed 7 *Acre* and 3 *Guntha* land. He submits that as a matter of fact, their claim in the application is for possession and for right to purchase 3 *Acre* and 22 *Guntha* land. He submits that their such claim although initially had been granted by tahsildar, that had been discarded by two authorities thereafter.

18. In the circumstances, he submits that the claim of present applicants, to be in possession has no legs to stand on and same stands razed to the ground. He further submits that it is weird as to why and how the applicants would approach this court by filing application when they are absolutely not in possession of the property. He submits that notices issued hitherto, would show that those have not at all been addressed to the applicants. None of the notice for that matter, he purports to point out, bears name of present applicants. He submits that the notices have been issued to such persons who are occupying the land despite decree been passed in favour of the respondents. He submits that the application has been made by present applicants as a stooge for said persons, who are not before this court. It is submitted that, it is at the behest of such persons, present application had been moved and the same deserves to be dismissed in *limine* with costs. He submits that huge expenses have been incurred by the respondents, to have execution of decree.

19. During the course of his submissions, Mr. Milind Patil also refers to that present applicants are not in possession, is borne out from two other events which are worth taking cognizance of. Respondents had filed suit for injunction against

present applicants in respect of the very same land and the suit although initially had been dismissed, at the appellate stage, decree had been granted by appellate court injuncting present applicants from interfering with the suit property. Said decree is intact and yet has not been disturbed. He submits that few of the applicants in 2017, initiated proceedings for injunction against present respondents. Their suit has been dismissed. All these facts, according to learned counsel, have been kept away from this court while the application has been filed. He submits that application has not been moved bonafide. As a matter of fact, the same has been filed suppressing vital aspects involved in the matter. Applicants have no case on equity. As such, the same deserves to be dismissed with heavy costs. It is submitted that having regard to the facts of the case, no analogy can be drawn which could be applicable to the present case from the citation relied on.

20. He also refers to that some criminal proceedings have been initiated against the respondents at the instance of a few applicants and those have been quashed under the orders of this court.

21. Having heard learned counsel for the parties, it emerges that origin of present writ petition lies in the application filed by predecessor of present applicants on 23-04-1990, seeking possession of 7 *Acre* and 3 *Guntha* land excluding the area of well and prayers have accordingly been made. In the said application as well, it has been referred to that same is for possession of land survey no. 110 to the extent of 7 *Acre* and 3 *Guntha* excluding well, pursuant to section 32 of the Hyderabad Tenancy and Agricultural Lands Act, 1950.

22. Proceedings at the instance of predecessor of applicants, initially had been granted by the tahsildar. In appeal therefrom, at the instance of present respondents, said order had been set aside and revision therefrom by present applicants had been dismissed and the matter is resting in writ petition wherein initially status-quo order had been passed, however, subsequently, the same appears to have got vacated since the writ petition itself stood dismissed. Thereafter, writ petition has been restored under the orders of this court, keeping open the question about interim relief. However, subsequent to 29-06-2018, there has no further orders on the writ petition as yet.

23. It will have to be considered that in the proceedings with regard to the claim of tenancy, an order passed on 29-04-1962 by the deputy collector, land reforms, Osmanabad and in revision, by Maharashtra Revenue Tribunal, Aurangabad have culminated into ownership of 13 *Acre* and 21 *Guntha* land from survey no. 110 in favour of predecessor of present applicants. Further proceedings have been initiated only in 1990, as referred to hereinabove claiming possession of 7 *Acre* and 3 *Guntha* excluding the portion of oil mill / factory. Further, the notices which have been placed on record dated 19-06-2018 and 10-08-2018 have not been addressed to the applicants at all. Looking at this background, the claim to be in possession of the property made by the applicants, appears to rest on a fragile foundation and it does not appear that there is substance in the same. In the circumstances, the claim of applicants under present civil application does not appear to be sustainable and same deserves to be rejected. As such, civil application is rejected.

[SUNIL P. DESHMUKH]
JUDGE

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