

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO.10205 OF 2018  
WITH  
WRIT PETITION NO. 10283 OF 2018

Ajinath Karbhari Thombre

...Petitioner

Versus

Tarabai Raosaheb Kadam

...Respondent

.....

Mrs. Pooja V. Langhe with Mr. Vijay R. Langhe, advocate for the  
petitioner

Mr. D.K. Kulkarni, advocate for the respondent

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CORAM : N. M. JAMDAR, J.  
DATED : 17 DECEMBER 2018

**ORAL ORDER:-**

1. Both these petitions concern the same parties and though arise from different suits, they relate to the same subject matter, therefore, have been argued together.

2. The property in dispute is land Gat No. 96 situated at village Padali, Tq. Khultabad, district Aurangabad. The petitioner in writ petition No. 10205 of 2018 has filed the Regular Civil Suit bearing No. 32 of 2018 in the Court of Civil Judge, Junior Division, Khultabad. This suit was instituted on 7 June 2018 seeking an order

of injunction against the respondent. From this suit, writ petition No. 10205 of 2018 arises.

3. The writ petition No. 10283 of 2018 arises from Regular Civil Suit No. 28 of 2018 filed by the respondent on 4 June 2018 for injunction.

4. Briefly stated, the learned Civil Judge, Junior Division, Khulabad had granted injunction in favour of the petitioner in the suit filed by him and had refused the injunction in the suit filed by the respondent. The respondent being aggrieved had filed appeals before the District Court which the District Court has allowed and as a consequence, the order of injunction in favour of the petitioner is vacated and injunction is granted in favour of the respondent.

5. The learned counsel for the parties have addressed the court at length and they have produced the compilation of documents and the decisions on which they relied upon. The petitioner has relied upon a registered sale deed which contains the recital that the possession of land Gat No. 96 is handed over to him by the original owner. The petitioner also relied upon the mutation entries carried out pursuant to the said sale deed, the measurement carried out by the original owner to which the respondent had no objection, the 7x12 extract in the name of the original owner, measurement maps, and admission of the respondent in the written statement. It is contended that the entries in the name of the respondent have been

cancelled by the appellate authority. Based on this evidence, the learned counsel for the petitioner submitted that the petitioner is in lawful possession having purchased the property on 24 January 2018 and the respondent who has no right whatsoever is trying to disturb his possession.

6. The learned counsel for the respondent submitted that the respondent is the owner of land Gat No. 98 and it may be that the respondent does not have documentation in respect of the property Gat No. 96 but she is in actual physical possession of the same and therefore, under the guise of injunction she cannot be evicted. He relied upon the 7x12 extract from the year 1995 and the affidavit of the original owner.

7. Before the rival contentions are considered, the scope of Article 227 of the Constitution and the limitation of the jurisdiction of this Court to enter into the assessment of evidence needs to be kept in mind. The Apex Court in the case of *Surya Dev Rai vs. Ram Chander Rai & Ors*<sup>1</sup> has dealt with the jurisdiction of the Court under Article 227.

8. In the present case, the petitioner has asserted his title, which at this interlocutory stage the respondent has not controverted however, her case is that she is in actual physical possession. The documents which have been placed on record by the petitioner are

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1 (2003) 6 SCC 675

pertaining to their vendor. Thus, he relied upon the recitals in the sale deed. The respondent has produced 7x12 extracts which are from the year 1995. Though it mentions that she had acquired the right in respect of some property by way of a deed, there is no such title deed. Even assuming the respondent does not have title to the property which is purchased by the petitioner, question is whether she is in possession and can be evicted in a suit filed for injunction. Though the entries in the revenue record have been cancelled by the appellate authority and order of the same is placed on record, there is no categorical finding in those orders that the respondent is not in possession. In fact, it is the grievance of the petitioner that after death of original owner, the respondent, taking advantage of the fact that the property was unguarded, encroached upon the same. Primarily, the contention of the petitioner is that the respondent has no title. The respondent has produced an affidavit of the owner.

9. Therefore, the respondent through the affidavit of the owner, entries in the revenue record and the case of the petitioner put up to challenge the mutation entry show that the view taken by the learned District Judge that the respondent is in actual physical possession becomes the possible view. It is not that there is no documentation in favour of the respondent at all of being in possession. On the other hand, the petitioner who has become owner in January 2018 is primarily relying upon their title in the suit property.

10. In this backdrop, the learned District Judge has considered the claim based on the title in respect of the possession. While balancing the rival contentions, the learned District Judge has taken into consideration these pieces of evidence produced by the respondent to conclude that the respondent is in actual physical possession. As regards the evidence produced by the petitioner regarding the measurement map, affidavit of owner, this evidence is balanced with the evidence produced by the respondent. The question to be decided in this petition is not whether who is in possession but whether the view taken by the learned District Judge is a possible view. It is in these contexts that the matter will have to be looked into. It is not the scope of these petitions to come to a contrary finding by re-appreciating the evidence on record, which would be exercising an appellate power.

11. In these circumstances, the view taken by the learned District Judge that the petitioner is not entitled to temporary injunction and that the respondent is entitled to temporary injunction cannot be interfered with. The petitions filed by the petitioner therefore, cannot be entertained and are rejected.

12. It is clarified that the observations made above are prima facie and the suit will be decided on its own merits.

( N. M. JAMDAR, J.)