

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 426 OF 2018

JAYSING VITHOBA GIRASE
VERSUS
BAJIRAO DAMODAR PATIL

...

Advocate for Petitioner : Shri Bhamre Manish V.

...

CORAM : RAVINDRA V. GHUGE, J.
Dated: January 11, 2018

...

PER COURT :-

1. The petitioner is aggrieved by the concurrent findings of the trial Court as well as the appellate Court, by which, the trial Court has granted temporary injunction to the plaintiff by its order dated 8.7.2016, below Exhibit 5, in RCS No.19 of 2016 and the appellate Court has dismissed MCA No.44 of 2016, filed by the defendant, by judgment dated 4.10.2017.

2. The petitioner / defendant strenuously contends that an agreement to sell was arrived at between the plaintiff and the defendant on 20.6.1998. It was agreed that the possession of the suit land would be handed over to the defendant. The plaintiff could seek permission from the District Collector for formalizing the sale as it is a restricted tenure land. The petitioner paid an advance of

Rs.35,000/- and the remaining amount of Rs.88,800/- as the sale consideration, was to be paid after the Collector accords permission for the sale.

3. It is further contended that the plaintiff admits the agreement to sell, though it is not a registered document and, therefore, it is admitted that the defendant has been put in possession in 1998 itself. Both the Courts could not have granted injunction.

4. It is not in dispute that there is no document placed on record before the trial Court, the appellate Court as well as this Court to indicate that the defendant had made a formal application to the Collector for sanctioning the sale or for instituting a suit for seeking specific performance of the agreement to sell. The suit land is a restricted tenure land. Without the permission of the Collector, the sale cannot be sanctioned. The entry in the record of rights and the mutation entry, which have a presumptive value, indicate the name of the plaintiff as being the owner of the suit land. The entries in the crop column since 1990 till 2016 indicates that the plaintiff is cultivating the suit property. Revenue receipts indicate that the plaintiff was paying the taxes.

5. From 1998 till 2016, the defendant has not filed a suit for

specific performance and has not asserted his right. The defendant is also silent on the aspect of the plaintiff having not moved the District Collector for seeking sanction to the sale. It is on these premises, that the trial Court as well as the appellate Court were convinced that the plaintiff was in lawful possession of the suit property.

6. Considering the above, I do not find that the impugned order is perverse or erroneous. The petition being devoid of merits is dismissed.

(RAVINDRA V. GHUGE, J.)

...

akl/d