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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9440 OF 2016

Shantaram G. Bavalekar & Ors.	...Petitioners
V/s.	
Malas Fruit Products & Ors.	...Respondents

WITH
WRIT PETITION NO.13660 OF 2016

Sanjay R. Bavalekar & Ors.	...Petitioners
V/s.	
Malas Fruit Products & Ors.	...Respondents

Mr.A.V. Anturkar, Senior Counsel I/b Mr.Prathamesh Bhargude for the
Petitioners.

Mr.Girish Godbole with Mr.Nishir Kanade and Ms.Sarika Mehra I/b LJ
Law for the Respondents.

CORAM : R.D. DHANUKA, J.
DATE : 24TH SEPTEMBER, 2018.

P.C. :-

1. By both these petitions filed by the petitioners under under Articles 226 and 227 of the Constitution of India, the petitioners have impugned the order dated 26th July, 2016 passed in the Miscellaneous Civil Appeal No.226 of 2015 and the order dated 22nd July, 2016 passed by the learned *Ad-hoc* Additional District Judge – (1), Satara in Miscellaneous Civil Appeal No.23 of 2016. By consent of parties, both the petitions were heard together and are being disposed of by a

common order.

2. The subject matter of the suit was the land admeasuring 1-H and 51-R out of total area of 5-H and 32-R, out of larger area of 14 acres and 39 gunthas of survey no.21 of village Metgutad, Taluka Mahabaleshwar, District Satara. It is the case of the petitioners that they belong to Bavalekar family. Around 1931, the 7/12 extract system was introduced in the village Metgutad. Prior to 1931, the revenue record was maintained in the form of Kadaipatrak.

3. It is the case of the petitioners that the Kadaipatrak was maintained in respect of various properties of village Metgutad. Three groups were shown as "Magaliali", "Madhali Alia" and "Pudhali Ali". It is the case of the petitioners that out of the area of 5 acres and 32 gunthas, the area of 62 gunthas was sold by the predecessor-in-title of the petitioners to various persons. According to the petitioners, even after deducting the said area of 62 gunthas from the total area of 5 acres and 32 gunthas, there was balance area of approximately 1-H and 69-R with the predecessor-in-title of the petitioners. It is the case of the petitioners that though the area of 9-R are shown in possession of the petitioners, the same belongs to survey no.21/10. According to the petitioners, the respondent no.1 had purchased the property in the year 1981 admeasuring 1-H and 1-R. The petitioners have no dispute in respect of that area of 1-H and 1-R purchased by

the respondent no.1.

4. There is no dispute in respect of the area admeasuring 1-H and 9-R which was partly purchased to the extent of 1-H and 8-R by the respondent no.1 and the area of 8-R was purchased by Kashinath Bhiku Bavalekar, Sundarabai Bhikan Bavalekar and Eknath Bhikan Bavalekar from Kalyani. The dispute is in respect of the area admeasuring 1-H and 51-R which is shown in the 7/12 extract as "increased area". Some time in the year 2014, Sanjay R. Bavalekar and others filed a suit bearing Regular Civil Suit No.94 of 2014 in the Court of Civil Judge, Junior Division, Mahabaleshwar. The said Sanjay R. Bavalekar also filed an application (Exhibit – 5) *inter-alia* praying for interim relief in the said suit. The respondent no.1 filed a suit bearing Regular Civil Suit No.27 of 2015 *inter-alia* praying for an injunction. The said Sanjay R. Bavalekar had prayed for a declaration about the ownership of the area admeasuring 1 acre and 51-R in the said Regular Civil Suit No.94 of 2014. The respondent no.1 also filed a separate application (Exhibit – 5) *inter-alia* praying for interim relief in the said Regular civil Suit No.97 of 2015. By a common order dated 1st December, 2015 passed by the learned Civil Judge, Junior Division, Mahabaleshar the said learned Civil Judge, Junior Division rejected both the applications below Exhibit -5 filed by both the parties.

5. Both the parties filed two separate Miscellaneous Applications impugning the said common order dated 1st December, 2015. By an order dated 22nd July, 2016, learned *Ad-hoc* District Judge -1, Satara allowed the Miscellaneous Civil Application No.226 of 2015 filed by the respondent no.1 and rejected the Miscellaneous Civil Appeal No.23 of 2016 filed by the petitioners. The petitioners have thus impugned the said order dated 22nd July, 2016 by filing two separate writ petitions in this Court.

6. Mr.Anturkar, learned senior counsel appearing for the petitioners in both the matters invited my attention to various exhibits annexed to the petitions, averments made in the plaint filed by both the parties, some of the documents annexed to the compilation of documents separately filed before this Court. It is submitted by the learned senior counsel that in the sale deed relied upon by the respondent no.1, no boundaries of the plots were mentioned. Though the respondent no.1 were not sold any additional area admeasuring 1-H and 51-R by Bavalekar, the respondent no.1 illegally claimed such additional area. He submits that it was the case of the respondent no.1 that the respondent no.1 had become the owner of the said additional area by adverse possession.

7. Learned senior counsel invited my attention to the order passed by the learned *Ad-hoc* District Judge – 1, Satara and would

submit that though in the impugned order the learned Judge has referred to Rule 30 of the Maharashtra Land Revenue Code, 1966 (for short “the MLR Code”) which was pressed in service by the petitioners, the learned Judge has not dealt with the said provision in the impugned order and totally ignored the said crucial provision. The said provision prescribed the procedure for making entries in the Register of Crops. He placed reliance on the 7/12 extract annexed at Exhibit “E” to the petitions and would submit that the said document also would clearly reflect that the respondent no.1 was in possession of the land admeasuring 1-H and 9-R and not the additional area admeasuring 1-H and 51-R.

8. It is submitted by the learned counsel that the learned Trial Judge has rightly rejected the application filed by the respondent no.1 below Exhibit – 5, whereas the learned *Ad-hoc* District Judge allowed the miscellaneous appeal filed by the respondent erroneously without considering the documents produced by the petitioners and without considering the submissions made by his client.

9. It is submitted by the learned senior counsel that the learned *Ad-hoc* District Judge has erroneously referred to the measurements allegedly taken four times by various Government authorities while rendering a *prima-facie* finding that the respondent no.1 was in actual possession of 2-H and 60-R land. He submits that

no such records were produced before the learned *Ad-hoc* District Judge nor the same were considered while rendering such finding.

10. It is submitted by the learned senior counsel that both the parties have agreed before the learned *Ad-hoc* District Judge that they will not enter the suit land for some time by filing a Pursis being Exhibits – 29 and 30. The arrangement continued from 2016 before this Court till date. He submits that the said arrangement be continued with a direction to the learned Tahsildar to dispose of the application filed by the respondent no.1 under section 155 of the MLR Code. He submits that the learned Tahsildar can be directed by this Court to decide the said application after following requisite procedure prescribed under the said MLR Code and after hearing both the parties on the issue of possession. He submits that no prejudice would be thus caused to the parties if the said *ad-interim* arrangement is continued and the application filed by the respondent no.1 under section 155 of the MLR Code is directed to be disposed of expeditiously.

11. Mr.Godbole, learned counsel for the respondents on the other hand invited my attention to some of the pleadings filed by both the parties, the documents annexed to the writ petitions and the findings rendered by the two Courts below. He submits that the petitioners had filed a suit for declaration that the construction carried

out by the respondent no.1 was illegal and be removed by seeking mandatory injunction against the respondent no.1. He submits that the petitioners have not prayed for possession of the suit property from the respondent no.1 and could not be allowed to urge that the respondent no.1 was not in possession of the suit land. Learned counsel laid emphasis on the findings rendered by the learned Trial Court as well as by the learned *Ad-hoc* District Judge to the effect that the entire holding of Balavekar family was already sold and no plot of land was available with them. He submits that the question of the petitioners thus claiming any right, title and interest whatsoever in the suit land did not arise.

12. Learned counsel invited my attention to a mutation entry annexed at Exhibit – Q at serial no.1056 which was entered after “Nimtana” measurement showing possession of the respondent no.1 including the area of the suit land. He submits that the said mutation entry has been admittedly not challenged by the petitioners. Learned *Ad-hoc* District Judge has considered several documents while rendering a *prima-facie* finding that the respondent no.1 was in possession of the land admeasuring 2-H and 60-R which was inclusive of the suit property.

13. Insofar the pending application of the respondent no.1 referred by the learned senior counsel for the petitioners is

concerned, it is submitted that the said application under section 155 of the MLR Code is pending before the learned Collector for carrying out corrections in the clerical error in the mutation entry. He submits that the reference made to Rule 30 framed under the MLR Code is misplaced as the said rule is even remotely not applicable to the facts at hand. Learned *Ad-hoc* District Judge thus has rightly not dealt with the said rule. He submits that the said rule applies for day to day Khate Patrika.

14. Learned counsel for the respondent nos. 1 to 4 placed reliance on the judgment of this Court in case of **Bansrajidevi w/o.Bhuval Singh Ramniranjan Singh And Others vs. M/s.Byramjee Jeejeebhoy Pvt. Ltd., And Others, 2006(6) Mh.L.J.95** and would submit that the names of the respondent nos. 1 to 4 were recorded in the mutation entry after following the procedure prescribed under sections 149 and 150 of the Maharashtra Land Revenue Code, 1966 by the authority. He submits that since the petitioners did not challenge the said mutation entry in favour of the respondent nos. 1 to 4, which entry was recorded after following requisite procedure, both the Courts below were right in rejecting the application (Exhibit - 5) filed by the petitioners.

15. A perusal of the record indicates that both the parties had filed two separate suits for different reliefs. Exhibit - 5 applications of

both the parties had been rejected by the learned trial judge. Both the Courts have also recorded the *prima-facie* findings of fact that Bavalekar family had already sold their entire holdings and no plot had remained with them. It is not in dispute that the mutation entry showing the excess area in possession of the respondent nos. 1 to 4 have not been challenged by the petitioners.

16. The learned *Ad-hoc* District Judge while dismissing the appeal filed by the petitioners has after considering various documents on record has recorded the *prima-facie* findings of fact that the respondent nos. 1 to 4 were in possession of the area admeasuring 2 Acre 60 R which were inclusive of the additional land and forming part of the suit property. The petitioners on the other hand could not produce any document in support of their rival contention insofar as the suit property is concerned even to establish even *prima-facie* right, title, interest policy or possession in respect of the suit property. In my view, the findings rendered by the learned *Ad-hoc* District Judge insofar as possession of the respondent nos. 1 to 4 in respect of the suit property is concerned, being not perverse, cannot be interfered with by this Court.

17. Insofar as submission of the learned senior counsel for the petitioners that though the learned *Ad-hoc* District Judge had mentioned in the impugned order that the documents produced by the

respondent nos. 1 to 4 shows that the Government authorities i.e. Mamletdar, Sub-Divisional Officer, T.I.L.R. had carried measurement four times and found the respondent nos. 1 to 4 in actual possession. 2-H 60-R land is based on no document is concerned, Mr.Godbole, learned counsel for the respondent nos. 1 to 4 pointed out some of the documents on record which were considered by the learned Ad-hoc District Judge while rendering the said findings about the actual possession of the respondent nos. 1 to 4 of 2-H 60-R land.

18. The learned *Ad-hoc* District Judge has rightly held that the factum of possession is important for temporary injunction during the pendency of the suit. The learned *Ad-hoc* District Judge also rendered a finding that the balance of convenience was in favour of the respondent nos.1 to 4 and not in favour of the petitioners. Though on some of the issues, the learned trial judge has rejected the application below Exhibit - 5 filed by the respondent nos.1 to 4, findings of the two Courts below are concurrent findings in favour of the respondent nos.1 to 4. In my view, the learned *Ad-hoc* District Judge has rightly interfered with the impugned order passed by the learned trial judge rejecting application Ex.5 filed by the respondent nos.1 to 4.

19. Insofar as the reliance placed on Rule 30 of the Maharashtra Land Revenue Code is concerned, in my view reliance placed on the said Rule by the learned senior counsel for the

petitioners is misplaced. The said Rule did not apply to the application filed by the respondent nos.1 to 4 under section 155 of the Maharashtra Land Revenue Code. In my view, there is thus no merit in the submission of the learned senior counsel that though the learned *Ad-hoc* District Judge referred to the said Rule in the impugned order did not deal with the said arguments. In my view, since Rule 30 was not at all applicable, even if the same is not specifically dealt with as urged by the learned senior counsel for the petitioners, the same would not affect the case of the petitioners.

20. Insofar as the submission of the learned senior counsel for the petitioners that both the parties had agreed to an interim arrangement before the learned *Ad-hoc* District Judge that none of them would enter the suit plot and the same arrangement is continued till date and be continued with a direction to the learned Tahsildar to dispose of the application filed by the respondent nos.1 to 4 is concerned, this suggestion of the learned senior counsel is vehemently opposed by Mr.Godbole, learned counsel for the respondent nos. 1 to 4. He submits that the said arrangement was a temporary arrangement to enable the petitioners to challenge the order passed by the learned *Ad-hoc* District Judge before this Court. The said order however continued in view of these two petitions having been adjourned on one or the other ground or had not been

argued on merit till date. He submits that the respondent nos. 1 to 4 cannot be made to suffer though there was strong *prima-facie* finding of their possession in respect of the suit plot.

21. This Court cannot compel the parties to continue their statement made before the learned *Ad-hoc* District Judge and continued before this Court. This Court having held in this order that the findings of possession rendered by the learned *Ad-hoc* District Judge in favour of the respondent nos.1 to 4 does not warrant any interference. I am inclined to accept submission of Mr.Godbole, learned counsel for the respondent nos.1 to 4 that an interim arrangement arrived at between the parties shall not be continued and also that the issue arising in these writ petitions even otherwise cannot be decided one way or the other by the learned Tahsildar in the pending application filed by the respondent nos.1 to 4 under section 155 of the Maharashtra Land Revenue Code, 1966.

22. In my view, both these petitions are without any merit. I, therefore, pass the following order :-

- a). Writ Petition No.9440 of 2016 and Writ Petition No.13660 of 2016 are dismissed.
- b). There shall be no order as to costs.

(R.D. DHANUKA, J.)