

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4070 OF 2017

Shamrao Rama Bagane & Ors.	...	Petitioners
V/s.		
Baburao Maruti Bagane & Ors.	...	Respondents

- Mr.S.S. Patwardhan a/w. Mr.Chetan G. Patil for the Petitioners.
- Mr.Sandeep S. Koregave for Respondent Nos.1 to 6.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 5th FEBRUARY, 2018.

P.C. :

1] Heard learned counsel for the Petitioners and the Respondent Nos.1 to 6.

2] By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioners are challenging the concurrent finding of the fact arrived at by the Court of Jt.Civil Judge Junior Division, Kagal, below Exhibit-5 in Regular Civil Suit No.59 of 2016 and by the District Judge-9, Kolhapur in his order dated 18th October 2016 passed in Miscellaneous Civil Appeal No. 195 of 2016.

3] The Application at Exhibit-5 was filed by the Respondents/herein contending *inter-alia* that they are in peaceful

possession of the land bearing Gat No.521 having total area 0.36 Are out of it 8 Anna shares farm land, Gat No.528 having total area 1.80 Are, out of it 8 Anna shares farm land, Gat No. 480 having total area 0.98 Are, out of it 8 Anna shares farm land, as described in detail in paragraph (1) of the application. According to the them, the said lands were owned by the landlord Shri Ghadge and they have purchased the said lands in proceedings under Section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short, "*B.T. & A.L. Act*"). Since then, they are in lawful possession thereof. Their names are also mutated in the record of rights. As the Petitioners herein started causing obstruction to their possession, they were constrained to file the suit for simpliciter injunction. Along with suit they filed an application for temporary injunction at Exhibit-5. In support of their case, they relied upon the 7/12 extract of the suit land, along with the Mutation Entry No.833 under which their names were entered into the record of rights.

4] The Petitioners herein resisted the said application contending *inter-alia* that they are having equal rights and share in the suit property. The name of their predecessor Rama, is also appearing in the 32M Certificate. Even in the earlier suit bearing Regular Civil Suit No. 8 of 1999 filed by the Petitioners and the

Respondents against the landlord Shri Ghadge, they had categorically stated that both the Petitioners and the Respondents are in possession of the suit lands. Thus, it was submitted that, the contention raised by the Respondents that they are in exclusive possession of the suit land is not correct. The Respondents have not disclosed all the facts and hence, their application for interim injunction needs to be dismissed.

5] The trial Court, after hearing learned counsel for both the parties and after perusal of the 32-M Certificate, the 7/12 extract and especially the Mutation Entry No.833, which was standing exclusively in the name of the Respondents since the year 1990, held that the Respondents have made out *prima-facie* case and accordingly, allowed their application for interim injunction.

6] When the Petitioners challenged the said order before the Appellate Court, by filing Miscellaneous Civil Appeal No.195 of 2016, the Appellate Court also confirmed the said order for the reasons stated by the trial Court after considering the 32-M Certificate produced on record and the Mutation Entry No.833.

7] This concurrent finding of the trial Court and the Appellate Court is challenged in this Writ Petition by learned counsel for the Petitioners submitting that the 32-M Certificate which is produced on

record clearly goes to show that along with the name of Respondents, the name of the Petitioners' predecessor "Rama" was definitely standing in the same and the averments made in the 32-M Certificate go to show that he was declared as owner of the suit lands along with the Respondents. It is further submitted that under the provisions of B.T. & A.L. Act, 32-M Certificate conclusively proves the ownership over the said land. In such situation, merely because the names of the Petitioners are not appearing in the 7/12 extract, it cannot be said that they are not in possession thereof. According to learned counsel for the Petitioners, both the Courts below, therefore, have committed a grave error, especially in the light of the earlier suit also, which was filed by the Petitioners and the Respondents jointly, bearing Regular Civil Suit No.8 of 1999, against the landlords. Thus, according to learned counsel for the Petitioners, on account of this perversity of not appreciating the 32-M Certificate and other material on record properly, the impugned orders passed by the Courts below need to be quashed and set-aside.

8] Per contra, learned counsel for the Respondents has submitted that as there is concurrent finding of the fact recorded by both the Courts below, this Court should be slow in interfering with the same in its writ jurisdiction. It is submitted that no error apparent on

the face of record can be found in the finding of fact arrived at by the trial Court and the Appellate Court. It is urged that, the 32-M Certificate, more than clearly goes to show that as regards, the Petitioners' predecessor "Rama", his name was shown as purchaser/owner only in respect of the land bearing Survey No.134/1 (present Gat No.529). Whereas as regards the Respondents, their names are appearing as purchasers/owners in the said 32-M Certificate against all the three suit lands. According to him, therefore, no fault can be found in the impugned order passed by the Courts below.

9] In this case, at the outset itself, it has to be stated that, both the trial Court and the Appellate Court has considered entire documentary evidence placed on record before it and on the basis of the same arrived at the factual finding and therefore, as per the settled legal position, unless some perversity is shown in the said finding, this Court cannot interfere in the discretion exercised by the Courts below.

10] The entire reliance of both the Petitioners and the Respondents is on the 32-M Certificate and the perusal of the 32-M Certificate makes it abundantly clear that, so far as these three suit

lands are concerned, which were earlier bearing Survey Nos.133/1, 132/2 and 127/3/6, the name of “Maruti” i.e. the Predecessor of Respondents is written separately, whereas so far as the land bearing Survey No.134/1 is concerned, the name of predecessor of the Petitioners “Rama” is mentioned separately. This fact is also reflected in the subsequent corrected 32M Certificate dated 17th July 1998, which makes it very clear that “Rama” was declared to be the owner of one suit land, viz., Survey No. 134/1 (Gat No.529); whereas the Respondents' predecessor Maruti was declared to be the owner of three suit land, viz., Survey Nos.133/1 (Gat No.528), 132/2 (Gat No.521) and 127/3/6 (Gat No.480).

11] Thus, when 32-M Certificate itself, makes a distinction between the lands purchased by the predecessors of the Respondents “Maruti” and of the Petitioners “Rama”, then there is hardly any substance in the case of the Petitioners that along with Respondents, they have also become the owners of the suit lands.

12] It may be true that, the Respondents and the Petitioner's predecessor “Rama” had filed a suit bearing Regular Civil Suit No. 8 of 1999 against Dhairyasheel Bhaiyasaheb Ghadge & Ors., the landlords, in which, they have stated that they have become the owners of the

suit lands, mentioned therein. The suit lands mentioned therein contain description of these four lands bearing Gat No.528, 521, 480 and 529, and there is also averment in the plaint that they are in possession of the suit lands. However, as the said suit was against the landlord, a general statement was made that all the Plaintiffs therein are in possession of the suit lands but this averment cannot be of much significance having regard to the 32-M Certificate which stands issued separately in respect of the suit lands in favour of Maruti, the predecessor of the Respondents, and in respect of Gat No.529 in the name of Rama, the predecessor of the Petitioners.

13] This inference gets strengthened by the Mutation Entry No.833 which was effected in the year 1990 itself. By this Mutation Entry, the name of Respondents alone came to be recorded in the 7/12 extract of the suit lands and till today the Petitioners have not challenged the said Mutation Entry nor made any application for entering their names in the record of the suit lands. It shows that they are also very clear in their mind that the suit lands are owned by “Maruti”, the predecessor the Respondents. Whereas the land bearing Gat No.529 was owned by “Rama”, the predecessor of the Petitioners. Now the Petitioners cannot contend that they are having the ownership on the suit lands also.

14] Both the trial Court and the Appellate Court have thus rightly considered all these factual aspects of the case in their proper perspective. Hence, in the writ jurisdiction, no interference is warranted therein. Writ Petition, accordingly, stands dismissed.

15] It is clarified that whatever observations made here-in-above are only for the purpose of deciding this Writ Petition and the trial Court is not to be influenced by them.

[DR.SHALINI PHANSALKAR-JOSHI, J.]