

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.10687 OF 2016

LAXMIBAI MAHADEO KAMBLE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH
CONTEMPT PETITION NO.110 OF 2018
IN
WRIT PETITION NO.9458 OF 2012

LAXMIBAI MAHADEO KAMBLE
VERSUS
APPASAHEB BHIMRAO PAWAR AND OTHERS

...

Advocate for the Petitioner : Shri Kedar Balbhim R.
AGP for Respondents 1 and 2 : Shri S.W.Munde.
Advocate for Respondent 3 in WP and for 1 to 5 in CP : Shri N.B.Jadhav.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 08th April, 2019

Per Court:

(a) Writ Petition No.10687/2016 :-

1 The learned Advocate appearing on behalf of Appasaheb Bhimrao Pawar, Vishnu Bhimrao Pawar, Abhijit Vishnu Pawar, Amol Vishnu Pawar and Chayya Vishnu Pawar, who are the Respondents in Contempt Petition No.110/2018, appears on behalf of Appasaheb (Respondent No.3) in this Writ Petition No.10687/2016.

2 I have heard the learned Advocates for the respective sides. Considering the order that I am passing, I do not find it necessary to issue notice to Respondent No.4 (Nilkanth Shinde) or even a formal notice to Respondent No.3 (Appasaheb Pawar), who is already before this Court in the connected contempt petition.

3 The Petitioner claims to have purchased the land, which is the suit property in RCS No.231/2011 filed by her on the basis of the registered sale deed dated 29.04.2005. Appasaheb and others claimed to have purchased the same suit property on 24.03.2002 on the basis of the agreement to sell.

4 There are many contentious issues raised by the litigating sides including purchasing of the Bond papers by the Petitioner (Laxmibai) on 11.01.2001 from Tuljapur when the parties reside at Yedashi and that Appasaheb has only entered into an agreement to sell and does not have a registered sale deed. All these aspects can be gone into in RCS No.231/2011 filed by the Petitioner (Laxmibai) claiming a declaration of title and ownership over the suit land.

5 Appasaheb was the Petitioner in Writ Petition No.9458/2012 in which, he had challenged the judgment and order delivered by the Appellate Court in Miscellaneous Civil Appeal No.5/2012 by which, the appeal filed by Laxmibai was allowed and the temporary injunction was granted. This Court has observed in paragraphs 3 to 6 of it's order dated

24.11.2018 as under :-

- "3. *The learned Counsel for the petitioner submitted that the learned Trial Judge has rightly refused to grant temporary injunction and the learned District Judge without considering legality of the documents in favour of the respondent/plaintiff has granted order of injunction. The learned Counsel for the petitioner submitted that the respondent/plaintiff had not produced any document in his favour. He also contended that mutation entry in favour of the respondent/plaintiff has been cancelled by the authority.*
4. *Having gone through the orders passed by the learned Civil Judge and the learned District Judge, it appears that the learned Civil Judge has primarily relied upon the validity of the documents in favour of the respondent/plaintiff. The learned Civil Judge referred to the documents produced by the respondent/plaintiff, such as, the 7/12 extracts, application for loan, the maps, copy of the order passed in another suit. But the learned Civil Judge did not accept these documents on the ground that the sale deed executed in favour of the respondent/plaintiff is not legal. The learned District Judge in appeal filed by the respondent/plaintiff held that legality of the sale deed cannot be the only criteria and what also needs to be considered is that whether the respondent/plaintiff is in settled possession. The learned District Judge noted that the respondent/plaintiff is in possession since the year 2005 which needs to be protected.*
5. *The thrust of the petitioner is also in respect of the agreement executed in his favour in the year 2002. The learned Counsel for the petitioner also contended that there is an affidavit by the neighbour. Therefore, before the Court the respondent No.1 had produced a sale deed of the year 2005, the documents, such as, tractor loan transaction, 7/12 extracts and the petitioner had produced his own agreement of the year 2002. The learned District Judge, who is the final fact finding*

authority, has recorded a prima facie finding that the respondent/plaintiff is in possession. If this finding is to be treated as perverse and interfered with in limited jurisdiction under Article 227 of the Constitution of India, there has to be a contra cogent piece of evidence. Only document shown to the Court is the agreement of the year 2002 and affidavit of neighbour which is in general term. On the basis of these documents alone, assessment of evidence and the prima facie finding of the fact recorded by the learned District Judge cannot be interfered with. Merely because another view is possible on reappreciating the evidence, the use of discretion for grant of injunction which is operating for last six years, cannot be interfered with. Though this Court while issuing notice had observed that the parties to maintain status-quo, grant of injunction was not stayed.

6. *In these circumstances, the writ petition cannot be entertained and is accordingly rejected."*

6 In view of the above, this Writ Petition is disposed off by directing the Trial Court to decide RCS No.231/2011 expeditiously and preferably on or before 29.02.2020.

7 Needless to state, the impugned order passed by the Principal Secretary, Revenue and Forest Department, State of Maharashtra dated 23.03.2016 would be subject to the result of the said suit. The litigating sides would be bound by the observations of this Court appearing in the order dated 24.11.2018 reproduced above along with the observations of the learned District Judge, till the suit is decided.

8 Notwithstanding the above, the application filed by the

Petitioner (Laxmibai) in June, 2012, which is stated to be pending before the District Collector for granting post facto sanction for sale of the land covered under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, can be decided by the District Collector after hearing all the sides and on the basis of the new policy introduced by the State of Maharashtra dated 09.07.2002. It shall be noted by the litigating sides that the decision of the District Collector would be subject to the result of the suit and all contentions of the litigating sides are, therefore, kept open for the Trial Court to consider on their own merits.

9 At this stage, the learned Advocate for the Petitioner submits that Nazrana amount may not be considered as per the ready reckoner rates existing today as the application was filed by the Petitioner (Laxmibai) seeking regularization, in June, 2012.

10 This aspect is kept open for the District Collector to consider. However, the Petitioner is at liberty to tender a copy of her application filed in June, 2012 afresh to the District Collector along with the copy of the order of this Court passed today.

(b) Contempt Petition No.110/2018 :-

11 Insofar as the contempt petition is concerned, the learned Advocate for the Petitioner submits that he is not interested in punishing any litigant. However, the Petitioner prays that the Respondents be

cautioned and informed that they should not indulge in any act opposed to any order applicable to the parties until the suit is decided.

12 The learned Advocate for the Respondents submits that they are law abiding citizens, have respect for the rule of law in this land and will never take the law in their own hands. It is further stated that they will not disobey any order presently in force and applicable to the litigating sides.

13 In view of the statements made as above, which are recorded as statements made to this Court, by the consent of the Petitioner, this Contempt Petition is disposed off.

kps

(RAVINDRA V. GHUGE, J.)