

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

WRIT PETITION NO.2296 OF 2018

Dattatraya s/o Sandipan Ingale,
Age: 28 Years, Occu: Agril.,
R/o: Dighol Deshmukh,
Tq. Renapur, Dist. Latur.

...Petitioner

Versus

1. Madhav s/o Balasaheb Deshmukh,
Age: 48 years, Occu: Agriculture,
2. Yeshwant s/o Balasaheb Deshmukh,
Age: 39 years, Occu: Service,
3. Vinayak s/o Balasaheb Deshmukh,
Age: 43 years, Occu: Agriculture,
R/o: Dighol Deshmukh,
Tq. Renapur, Dist. Latur.
4. The District Superintendent of Land Records,
Latur.
...Respondents

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Mr. E.P. Sawant, Advocate for Petitioner.
Mr. A.B. Chate, AGP for Respondent No.4/State.
Mr. D.P. Deshpande, Advocate for Respondent Nos.1 to 3.

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**CORAM : P.R. BORA, J.
DATED : 02nd JULY, 2019.**

ORAL JUDGMENT:-

1. Heard finally with consent of the learned counsel appearing for the parties.

2. Aggrieved by the order dated 05.02.2018 passed by the Ad-hoc District Judge-1, Latur in Miscellaneous Civil Appeal No.98 of 2017, the petitioner has preferred the

present writ petition.

3. The petitioner has preferred Regular Civil Suit No.153 of 2017 in the Court of Joint Civil Judge, Junior Division, Renapur seeking perpetual injunction against the respondents. It is the case of the petitioner that survey no.57 situated at village Dighol Deshmukh, Taluka Renapur is owned and possessed by him. According to the averments in the suit plaint, the said land was purchased by the father of the petitioner in the year 1970 by a registered sale deed and since then, he was in possession of the said land. It is also the contention of the petitioner that in implementation of the consolidation scheme, survey no.57 was converted into gut no.154 in the year 1976 and the petitioner was allotted the land ad-measuring 1H 98R. As is averred in the suit plaint, the revenue entries were accordingly taken in the year 1977 wherein, the petitioner is shown to be owner and possessor of 1H 98R land out of gut no.154. It is further case of the petitioner that since, respondents attempted to interfere the possession of the petitioner over the suit land, he was constrained to file the aforesaid suit seeking perpetual injunction against them. In the aforesaid civil suit, the petitioner had filed an application seeking interim injunction at Exhibit-5. The application was

contested by the respondents. The learned Civil Judge, Junior Division was however, pleased to allow the said application vide order passed on 24.11.2017 and thereby temporarily restrained the respondents from causing interference in the alleged possession of the petitioner over the suit land till decision of the suit. The said order was challenged by the respondents before the District Court by filing Miscellaneous Civil Appeal No.98 of 2017. The learned District Judge after having heard the learned counsel appearing for the parties and after having perused the order passed by the learned Civil Judge, Junior Division and the other material placed on record, set aside the said order vide the impugned order. Aggrieved by, the petitioner has preferred the present writ petition.

4. Shri Sawant, the learned counsel appearing for the petitioner assailed the impugned order on various grounds. The learned counsel submitted that the learned First Appellate Court has failed in appreciating that the consolidation scheme has got a presumptive value and the revenue record is prepared in consonance with the consolidation record, which is in favour of the case pleaded by the petitioner. The learned counsel further submitted that the First Appellate Court also erred in ignoring the

consistent entries in the revenue record in favour of the petitioner since 1977 till the date of filing the suit. The learned counsel submitted that the First Appellate Court has further grossly erred in accepting the additional evidence at the appellate stage. The learned counsel further submitted that the First Appellate Court has given unnecessary weightage to the affidavits filed of the adjacent owners by ignoring documentary evidence on record pertaining to the consolidation. The learned counsel further submitted that the First Appellate Court must have appreciated that the respondents did purchase the land gut no.155 in the year 2007 and the petitioner's sale deed was of the year 1970 and the consolidation scheme was implemented in the year 1976. The learned counsel submitted that the First Appellate Court has also failed in appreciating that the boundaries in the sale deed if seen are similar to the boundaries mentioned in the plaint of the suit land. The learned counsel further submitted that the decision of the First Appellate Court is based on the surmises and conjecture and not on the evidence. The learned counsel, in the circumstances, prayed for setting aside the order and to confirm the order passed by the learned Civil Judge, Junior Division on 24.11.2017.

5. Shri D.P. Deshpande, the learned counsel appearing for the respondents supported the impugned order. The learned counsel submitted that the First Appellate Court has rightly considered the affidavits of the adjoining land holders. The learned counsel submitted that the learned District Judge has also provided the justification for accepting the additional evidence at the appellate stage. The learned counsel submitted that as per the record of the Deputy Superintendent of Land Records, the total area of the suit land and land gut no.155 is about 2H 58R. The learned counsel submitted that in such circumstances, the First Appellate Court has reached to the right conclusion that the land claimed to be in possession admeasuring 1H 98R by the petitioner was in excess by 60R, which does not find place in the record of rights. The learned counsel, in the circumstances, prayed for dismissal of the petition.

6. After having heard the submissions made by the learned counsel appearing for the respective parties and after having perused the impugned order as well as the order passed by the Trial Court below Exhibit-5 and the other material placed on record, it is apparently revealed that the learned First Appellate Court has drawn certain conclusions on surmises and conjunctions and on the basis

of the additional evidence produced before him in the appeal. In para-6 of the impugned order, the First Appellate Court has made the following observations:

"Therefore, this reveals that, somebodies land might have been added to the suit land and some of the land might have been given to another persons in lieu of the suit land. This could be seen in the full dressed trial."

7. From the observations made as above by the First Appellate Court, it is evident that on surmises, the said Court had reached to the conclusion that somebodies land might have been added to the suit land. It has to be stated that no such case appears to have been pleaded by the respondent-defendant. Moreover, when the Appellate Court was of the opinion that the aforesaid aspect can only be decided in a full dressed trial, there was no reason for the said Court to cause interference in the order passed by the Trial Court and the best course would have been to direct the Trial Court to expedite the hearing of the suit. It further appears to me that without there being any sufficient reason, the First Appellate Court has allowed the respondent-defendant to file on record the additional evidence in the form of affidavits of the adjacent land owners. In fact, such affidavits could have been certainly

filed by the respondent-defendant even before the Trial Court. It is significant to note that in para-10, the First Appellate Court has observed that at the appellate stage one is not supposed to adduce additional evidence. On perusal of the order passed by the Trial Court, it is revealed that it was convinced that the evidence which was produced before it was sufficient to grant the relief of interim injunction till disposal of the suit in favour of the plaintiff.

8. On perusal of the aforesaid order, it cannot be said that the said Court has passed an order without there being any evidence on record or that there was total misapplication of mind in interpreting the documents, which were placed on record before it. As is revealing from the impugned order, the conflicting documents were filed by the parties. Even in such case, according to me, the appropriate course would have been to ask the parties to proceed with the trial of the suit.

9. In the circumstances, I set aside the impugned order passed by the learned Ad-hoc District Judge-1, Latur on 06.12.2018 in Miscellaneous Civil Appeal No.98 of 2017. The Trial Court is directed to expedite the hearing of the Regular Civil Suit No.153 of 2017 and to decide the same by

giving due opportunity to the parties to the said suit, preferably within the period of one year. It is clarified that this Court has not expressed any opinion on the merits of the contentions raised by the respective parties. The writ petition thus stands allowed in the aforesaid terms.

(P.R. BORA, J.)

Mujaheed//