

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

909 WRIT PETITION NO.3823 OF 2016
WITH
CIVIL APPLICATION NO. 6657 OF 2019
WITH
CIVIL APPLICATION NO. 14174 OF 2019
IN
WRIT PETITION NO. 3823 OF 2016

MUJEEB KHAN HASAN KHAN AND OTHERS
VERSUS
AHMEDULLAH KHAN FARUALLAH KHAN AND OTHERS

...
Advocate for Petitioners : Mr. Navandar Mehul Vikas
Advocate for Respondent Nos.1 to 6: Mrs. Sanghmitra Wadmre
...

CORAM : V. K. JADHAV, J.
DATED : 3rd DECEMBER, 2019

PER COURT :-

1. By consent of the parties heard finally at admission stage.
2. The petitioners – original defendants nos. 1 to 3 have preferred this writ petition against the order passed below Exhibit-5 in the suit instituted by the respondents – plaintiffs for a decree of perpetual injunction and the said order stands confirmed on 30.01.2016 by the Ad-hoc District Judge-1, Aurangabad.
3. The respondents – plaintiffs have instituted the suit for perpetual injunction in respect of land Gut No.136 to the

extent of 10 Gunthas situated at village Satara, Taluka and District Aurangabad. Learned counsel for the petitioners – original defendants submits that on 15.07.1986 under the registered sale deed, father of the plaintiff viz. Faqrullah Khan and brother of the plaintiff, namely, Asadullakhan had purchased the land out of Gut No.136 to the extent of 20 Gunthas (10 Gunthas each) situated at village Satara, District Aurangabad from petitioner no.2 – Hasan Khan. Learned counsel submits that the respondents – plaintiffs are claiming perpetual injunction in respect of entire land of 20 Gunthas out of land Gut No.136. Learned counsel submits that admittedly, petitioner no.1 – original defendant no.3 – Mujib had purchased 10 Gunthas of the land out of the said 20 Gunthas of Gut No.136 from Asadullah Khan on 27.11.2009 under the registered sale deed for valuable consideration. Learned counsel submits that in both the sale deed, the similar boundaries of land admeasuring 20 Gunthas have been shown. Learned counsel submits that though the property could not be identified, the trial Court has issued the order of temporary injunction to protect the possession of the respondents – plaintiffs over 10 Gunthas of land. Learned counsel submits that by order dated 20.12.2016, while entertaining this writ petition, this Court has made the observations about the same and further directed the parties to maintain *status quo*. This

court has specifically observed that the plaintiffs are claiming ownership to the extent of 10 R. portion and even though, the Court at that time made a specific query with the learned counsel appearing for the respondents – plaintiffs as to which portion they are claiming to be in possession, the time was sought by the learned counsel appearing for the respondents – plaintiffs. By order dated 05.08.2019, when the matter was listed for admission, it is observed by the Court that instead of specifying which portion the respondents want or claim to be in possession in view of the earlier order dated 20.12.2016, the learned counsel appearing for the respondents – plaintiffs wanted to contest the petition on merits. This court has, therefore, observed that unless they comply with this Court's directions, this Court is not inclined to hear the respondents on merits. Learned counsel submits that the trial court so also learned District Judge has not considered these material aspects of the case. The writ petition thus deserves to be allowed by setting aside the impugned order.

4. Learned counsel for the respondents – original plaintiffs submits that in the second sale deed, Asadullah Khan, who is no more, had shown the same boundaries of 20 Gunthas of land though he had sold 10 Gunthas of land out of Gut No.136 to petitioner no.1 herein. Learned counsel submits

that by taking undue advantage of the same, the petitioners herein were trying to dispossess the respondents – plaintiffs and as such, the respondents – plaintiffs constrained to institute the suit for decree of perpetual injunction and also filed an application Exhibit-5 to protect their possession over the suit portion. Learned counsel submits that in compliance with the directions given by this Court as referred by the learned counsel appearing for the petitioners, the respondents – plaintiffs have filed Civil Application viz. Application No.14174 of 2019 and mentioned in the said application, the four boundaries of the suit land in possession of the respondents – plaintiffs. Learned counsel submits that unless and until the measurement is carried out in respect of 20 Gunthas of land, the possession of the parties to the extent of their respective shares could not have been determined. However, the petitioners herein by taking undue advantage of the boundaries shown in the second sale deed, are trying to dispossess the respondents – plaintiffs and as such the trial Court so also the District Court rightly protected the possession of the respondents – plaintiffs over their portion admeasuring 10 Gunthas out of land Gut No.136. There is no substance in this writ petition. The writ petition is liable to be dismissed.

5. On perusal of the copy of plaint and the copies of the sale deed placed on record, it appears that the respondents – plaintiffs have instituted the suit for decree of perpetual injunction in respect of 10 Gunthas of land and the boundaries have shown in the plaint are in respect of entire 20 Gunthas of land. The same is apparent for the reason that in the first sale deed of the year 1986 wherein father of the plaintiff and brother of the plaintiff had purchased the said land admeasuring 20 Gunthas from petitioner – Hasan Khan, the boundaries as shown in the sale deed are reproduced in the plaint. It further appears that in the second sale deed, when 10 Gunthas of land out of 20 Gunthas of Gut No. 136 sold by Asadullah Khan to petitioner no.1 herein, the same boundaries have been shown. Consequently, by order dated 20.12.2016, this Court by making observations to that effect, directed the parties to maintain *status quo* with further observation that they cannot prevent each other from enjoying their portion of the property. Learned counsel appearing for the respondents – plaintiffs has rightly pointed out that unless and until the measurement is carried out, the exact portion of 10 Gunthas of land could not be determined. Thus in the given set of facts, it would be just and proper, if both the parties are directed to maintain *status quo* as on the date of order i.e. 20.12.2019 passed by this Court till disposal of the suit with

further directions to the trial Court, to expedite the hearing of the suit and dispose of it as expeditiously as possible, preferably within a period of one year. Hence, I proceed to pass the following order:

ORDER

- I) The Writ Petition is hereby partly allowed.
- II) The parties are directed to maintain *status quo* as per interim order dated 20.12.2016 passed by this Court till disposal of the suit with following directions to the trial Court;

. The trial Court shall dispose of the suit as expeditiously as possible, preferably within a period of one year from the date of this order and the parties shall co-operate the trial Court.

- III) The writ petition is accordingly disposed of.
- IV) In view of the disposal of writ petition, nothing survives for consideration in the pending civil applications and the same also stand disposed of.

(V. K. JADHAV, J.)