

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4686 OF 2019

BABASAHEB UDDHAV GAME AND OTHERS
VERSUS
SHAHAJI UDHAV GAME AND ANOTHER

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Advocate for Petitioners : Shri Salunke V.D. h/f Shri Shelke M.U.
Advocate for Respondents 1 & 2 : Shri Tungar H.V.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 08, 2019

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PER COURT :-

1. The petitioners / plaintiffs are aggrieved by the judgment of the appellate court dated 5.3.2019, by which, MCA No.90 of 2018, filed by original defendant No.1 / Shahaji has been allowed and the temporary injunction granted by the trial Court vide order dated 29.10.2018, in favour of the petitioner / Babasaheb in RCS No.309 of 2018, is quashed and set aside.

2. I have heard the learned Advocates for the respective sides at length and have gone through the voluminous record available. I have also perused the map placed at Page No.248 by the defendant along with his reply.

3. By the consent of the parties, I have marked the small portion

of land admeasuring 26 Ares on the North side and the large rectangular patch of land on the South side with a red pencil. The huge awkward rectangle piece of land in between the 26 Ares land on the North side and the 3 Acres land on the South side belongs to a different owner.

4. The deceased Udhav was the biological father of the petitioner / Babasaheb, defendant No.1 Shahaji and the deceased son / Shivaji. When the initial undisputed partition took place during the lifetime of Udhav, the 3 acres of land on the South side was divided equally between the three brothers and the 26 Are land on the North side was retained by father Udhav. After the demise of Udhav, one brother Shivaji passed away. A portion of the land of the father was sold to one Ramesh Shinde admeasuring 17 Ares out of 26 Ares, by Babasaheb and Shahaji. That land is not at issue in the present petition.

5. By the consent of the parties, I have prepared a small sketch on Page No.248, wherein, the petitioner / Babasaheb has his parcel of land on the West side and respondent No.1 / Shahaji on the East side. The middle portion belongs to deceased Shivaji, which is already sold off to a third party. As such, there is no contact point between the petitioner / Babasaheb and the respondent / Shahaji.

The sketch, which I have drawn on Page No.248 is said to be a correct drawing, by the learned Advocates, who make such a statement on instructions. The said page No.248 shall be a part of this order.

6. Babasaheb admits that he has sold 33 Ares of land out of his 40 Ares land and claims that 7 Ares land is still an agricultural portion. Shahaji on the East side is using his land as an agricultural piece of land. Babasaheb makes a statement that as there is no contact point with Shahaji in so far as the geographical existence of their individual portions are concerned, he would not interfere with the land of Shahaji. Shahaji also reciprocates by making the same statement and therefore, it appears that Babasheb and Shahaji can co-exist in peace as there is no contact point for their individual portions of land, going by the geographical locations.

7. It is by the above consensus that both the orders passed by the trial Court, dated 29.10.2018 and the impugned judgment dated 5.3.2019, stand merged in this order in view of the consensus and neither Babasaheb nor Shahaji would interfere in their individual parcels of land, which they may utilize according to their own desire.

8. This petition is, therefore, disposed off in the above terms.

9. The above consensus is to the extent of the prayer for temporary injunction. The suit would be decided by the trial Court on its own merits. The trial Court may make an effort to refer this matter to the Mediator in order to establish peace between the brothers and their L.Rs.

(RAVINDRA V. GHUGE, J.)

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