

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

WRIT PETITION NO. : 8981 OF 2019

- 1] Umakant s/o Mahalingappa
Dhongade, Age : 50 years,
Occu. Agriculture, R/o
Marathigalli, Mudkhed,
Tq. Mudkhed, District Nanded
- 2] Nagorao s/o Kishanrao
Chilwantkar, Age : 40 years,
Occu. Agriculture, R/o Kumbhargalli,
Mudkhed, Tq. Mudkhed, District Nanded
- 3] Devidas s/o Rukhmaji Chandre,
Age : 40 years, Occu. Agriculture,
R/o Mathgalli, Mudkhed,
Tq. Mudkhed, District Nanded
- 4] Shankar s/o Kerba Pachling,
Age : 72 years, Occu. Agriculture,
R/o Mondha, Mudkhed,
Tq. Mudkhed, District Nanded
- 5] Jaiprakash s/o Rajaram Rachewad,
Age : 60 years, Occu. Agriculture,
R/o Kumbhargalli, Mudkhed,
Tq. Mudkhed, District Nanded.
- 6] Vaijnath s/o Tolaji Bhalerao
Age : 50 years, Occu. Agriculture,
R/o Marathigalli, Mudkhed,
Tq. Mudkhed, District Nanded
- 7] Dinesh s/o Ramrao Shete,
Age : 45 years, Occu. Agriculture,
R/o Mathgalli, Mudkhed,
Tq. Mudkhed, District Nanded

- 8] Suresh s/o Shankarrao Shete,
Age : 40 years, Occu. Agriculture,
R/o Mathgalli, Mudkhed,
Tq. Mudkhed, District Nanded.
- 9] Dinkkar s/o Vitthalrao Adkine,
Age : 40 years, Occu. Agriculture,
R/o Mathgalli, Mudkhed,
Tq. Mudkhed, District Nanded.
- 10] Chandrakant s/o Dagduram Shahane,
Age : 35 years, Occu. Agriculture,
R/o Sharadangar, Mudkhed,
Tq. Mudkhed, District Nanded.
- 11] Tukaram s/o Nagorao Ambarkhane,
Age : 65 years, Occu. Agriculture,
R/o Shardanagar, Mudkhed,
Tq. Mudkhed, District Nanded

**...PETITIONERS
(Orig. Defendants)**

VERSUS

- 1] Madhukar Guru s/o Basling Guru,
Age : 60 years, Occu. Agriculture,
R/o Mudkhed, Tq. Mudkhed, District
Nanded. At present : Shantikunj
Building, Vazirabad Road, Old Kautha,
Nanded, Tq. & Dist. Nanded.
- 2] The State of Maharashtra
Through Police Inspector,
Police Station, Mudkhed,
Tq. Mudkhed, Dist. Nanded

**... RESPONDENTS
(R.No.1 Orig. Plaintiff &
R.No. 2 Orig. Deft.No.12)**

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Advocate for the Petitioner : Shri S. V. Chandole
Advocate for Respondent No.1 : Shri P. R. Kathneshwarkar
AGP for Respondent No.2 : Shri S. W. Mundhe

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 13th NOVEMBER, 2019.

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ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith by the consent of the parties and heard finally.

2. The petitioner / original defendants in Regular Civil Suit No. 227/2018, are aggrieved by the interlocutory order dated 26/06/2018 passed by the Trial Court in Regular Civil Suit No. 227/2018, by which, temporary injunction has been clamped upon the defendants. They are directed not to interfere with the possession of the plaintiff over the suit property. They are also aggrieved by the judgment and order dated 17/11/2018 delivered by the Appellate Court, by which, their Miscellaneous Civil Appeal No. 61/2018 has been dismissed.

3. I have considered the strenuous submissions of the learned Advocates for the petitioners, respondent No.1 and the learned AGP on behalf of respondent No.2.

4. The contention of the petitioner defendants is that the plaintiff has no right over the suit property which is Gat No. 361 at Mudkhed. The land is owned by Shri Aparampar Swami Math Sansthan which was being led by Shri Basling Guru Iswaryya as the Mathadhipati. He had allegedly executed a 'will deed' on 20/04/1972 in favour of respondent No.1. The Guru passed away in February 1977. The plaintiff claimed to be the Mathadhipati of the said Math after his demise.

5. It is further submitted that the matter was earlier carried to the Assistant Charity Commissioner in Inquiry No. 225/1977 and by its order dated 28/06/1979, it was ordered that the Math be registered as a public trust. According to the Assistant Charity Commissioner Aurangabad, the plaintiff was the Manager of the Math. However, the said land Gat Nos. 101 and 104 were declared to be the properties of Basling Guru by the Joint Charity Commissioner in Appeal No. 129/1979. It is contended that he is in illegal possession and cannot protect his possession

since the petitioners are the owners of the property.

6. The learned Advocate appearing on behalf of the plaintiff, who carries the name as Madhukar Guru s/o Basling Guru, submits that when his possession over the suit property was under a severe threat, he had filed the suit. Though Basling Guru had suffered a paralytic attack in 1972, it is false and incorrect to state that he had obtained the thumb impression of Basling Guru on blank stamp papers and had forged the 'will deed'. He submits that he is in possession of the suit property and both the Courts below have concluded at a *prima facie* stage that he was in possession.

7. I find from the order passed by the Trial Court that it has *prima facie* concluded that the plaintiff was in possession. It also referred to the mutation entry No. 1390 which indicates the possession of the plaintiff.

8. I have perused the written statement filed by the petitioners in which they have repeatedly contended that the plaintiff is not the owner of the property and

he cannot seek injunction against the defendants. However, in the written statement, there is no averment that any of the defendants are in possession. The Appellate Court has recorded on the basis of the *prima facie* conclusions of the Trial Court that the defendants state that the plaintiff cannot continue his illegal possession. There is, however, no record to indicate that the defendants were in possession or are cultivating the suit land. Whatever revenue entries are available at this stage, they indicate that the plaintiff is in possession.

9. In view of the above, I do not find that the impugned concurrent findings, at a *prima facie* stage, could be branded as being perverse or erroneous. This petition, being devoid of merit is, therefore, dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)

shp/-