

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10874 OF 2019

VIJAY UTTAM PRASHAD
VERSUS
RAVI ALIS RAVINDRA UTTAM PRASHAD

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Advocate for Petitioner : Shri Dhengle B.A.
Advocate for Respondent : Shri Palodkar D.P.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: August 31, 2019

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PER COURT :-

1. The petitioner / defendant in RCS No.75 of 2016 is aggrieved by the judgment and order dated 5.8.2019, passed by the appellate Court, by which, MCA No.69 of 2017, filed by the respondent / plaintiff, has been allowed. The interlocutory order passed by the trial Court dated 16.3.2017, rejecting application Exhibit 5, filed by the plaintiff, has been quashed and set aside.

2. I have considered the strenuous submissions of the learned Advocates for the respective sides. There is no dispute that Special Civil Suit No.102 of 2014 seeking partition and separate possession is pending before the trial Court. The petitioner and the respondent are step brothers inter-se.

3. It is submitted by the petitioner that the entire joint family holding is approximately 70 acres of land and the said properties are subject matter in a suit for partition and separate possession. The suit property in the 2016 suit is admeasuring 5 acres and 20 gunthas and this property is also in the common hotch-potch in the 2014 suit.

4. The plaintiff herein approached the trial Court for seeking injunction against the petitioner on the ground that the petitioner is disturbing the peaceful possession of the plaintiff over the suit property. The said property is located in S.No.296 at Sillod, to the extent of landed property and the well is situated in S. No.299/4.

5. While dealing with the issue of grant of temporary injunction, the trial Court has considered the revenue records, but has relied upon the statement of the petitioner that the mother of the plaintiff did not have sufficient income to purchase 5 acres and 20 gunthas and the said property was purchased by a registered sale deed on 30.7.1975, through the earnings from their joint family holdings.

6. The learned Advocate for the plaintiff points out from the record that his mother was the first wife of Uttam. During her

lifetime, she has purchased the said property in the name of the plaintiff who was then a minor. 7/12 extracts and all revenue records indicate the continued possession of the mother as a guardian of the plaintiff. In the cultivation column in the 7/12 extract the cultivation done by the mother and then gradually by the petitioner and the crops that were taken during the agricultural activities are also mentioned. If the petitioner would not have disturbed the plaintiff, he would have no reason to file the 2016 suit for seeking injunction.

7. I have considered the reasons assigned by the trial Court in its order dated 16.3.2017 and the impugned judgment delivered by the first appellate Court. I am of the view that the first appellate Court has based its judgment on the revenue records and the documents including the registered sale deed dated 16.5.1975, by which, the mother had purchased the land by paying Rs.5,000/-. The mutation entry No.1843, dated 10.7.1975, is sustained upto the level of the Divisional Commissioner.

8. In this backdrop, I do not find that the impugned judgment could be termed as being perverse or erroneous. This petition being devoid of merits is, therefore, dismissed.

9. In view of the request of the parties, the trial Court shall endeavour to decide the Special Civil Suit No.102 of 2013 as expeditiously as possible and preferably on/or before 30.4.2020.

(RAVINDRA V. GHUGE, J.)

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