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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.961 OF 2019

Mahadev s/o Shivmurti Tattapure
Age - 53 years, Occ - Agri & Business
R/o Masjid Road, Subhash Chowk,
Hatte Nagar, Latur
Taluka and District - Latur

PETITIONER

VERSUS

1. Chaturbhuj (Bapu) s/o Haribhau Bhonde RESPONDENTS
Age - 66 years, Occ - Agriculture
R/o Kasargaon, Taluka & Dist - Latur
2. Basveshwar s/o Gurupadh Tattapure
Age - 41 years, Occ - Agriculture
R/o Masjid Road, Subhash Chowk
Hatte Nagar, Latur
Taluka and District - Latur
3. Shivshankar /so Gurupadh Tattapure
Age - 44 years, Occ - Agriculture
R/o Masjid Road, Subhash Chowk,
Hatte Nagar, Latur
Taluka and District - Latur

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Mr. V. D. Gunale h/f Mr. P. G. Rodge, Advocate for the petitioner
Dr. R. R. Deshpande, Mr. R. K. Ashtekar and Ms. Priyanka
Deshpande, Advocates for respondent No.1

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 6th MARCH, 2019

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard learned advocates for the appearing parties finally by consent.

2. Petitioner - original defendant No.1 in Regular Civil Suit No. 297 of 2014 is before this court challenging orders passed by trial as well as appellate courts at interlocutory stage of the suit filed by present respondent No.1 as plaintiff, for injunction in respect of properties bearing Gut No. 324/B admeasuring 8 Hectare 32 *Are*, Gut No. 329/K/3 admeasuring 1 Hectare 7 *Are*, Gut No. 331 admeasuring 3 Hectare 13 *Are* and Gut No. 326/K/1 admeasuring 1 Hectare and 88 *Are*, situated at Latur.

3. Present petitioner had appeared in the suit and filed written statement and denied the claims of the plaintiff. He denied that any contract had ever taken place between him and the plaintiff in respect of the properties referred to above. Nor has he received any amount in the claimed transaction. The documents are fabricated and do not bear signature of defendant No. 1.

3. Respondent No. 1 had filed application Exhibit-5 in the suit for temporary injunction relying on several documents *viz.*, agreement of sale claiming himself to be *bataidar* since 2006 as well as affidavits of some persons.

4. Trial court had taken into account the documents and after

observing as in paragraphs No. 12 to 15 of the order, considered that respondent No. 1 has *prima facie* case, balance of convenience lie in his favour and he may suffer irreparable loss in case temporary injunction is not granted and accordingly allowed application Exhibit-5 against the defendants, including present petitioner.

5. An appeal therefrom at the instance of present petitioner has also failed. The appellate court considered the case and placed appreciation as appearing in paragraphs No. 15 onwards of the impugned order and has concurred with the decision of the trial court and has dismissed the appeal.

6. Learned advocate Mr. Gunale, holding for Mr. Rodge on behalf of the petitioner, vehemently submits that suit properties are ancestral properties originally of two persons and the same have devolved on petitioner and respondents No. 2 and 3. Petitioner is not owner of entire area of land, yet bogus record has been created about entire lands having been transacted by him under bogus document. He submits that there is nothing on record to show that respondent No. 1 had ever been a *bataidar*. Revenue record would expose case of the plaintiff - respondent No. 1. However, the same has not been properly appreciated by

both the courts hitherto. He submits that even *panchanama* which had taken place after institution of the suit in 2015 would not bear that it would reveal that plaintiff had ever been in possession of the suit lands. He submits that the *panchanama* is merely recording of case pleaded by respondent No. 1 and nothing more. He, thus, purports to contend that while affidavits of adjoining land owners had been in favour of the petitioner, appreciation of the material does not adhere to the same and thus, the appreciation of the two courts below tends to be perverse. He, therefore, requests to allow the writ petition and set aside two concurrent orders.

7. On the other hand Dr. R. R. Deshpande, learned advocate appearing on behalf of respondent No. 1 - plaintiff submits that at the interlocutory stage of the matter, two courts have placed their appreciation on the material and have gauged that respondent No.1 has *prima facie* case, balance of convenience lies in his favour and that he would suffer irreparable loss in case injunction is not granted. Appreciation of the two courts in this respect can seldom be dubbed as perverse. He submits that it is not the case that there is no material at all, which would indicate that respondent No. 1 has no case. He submits that in support of his claim, respondent No. 1 has placed on record agreement,

panchanama in the revenue proceedings, affidavits of the really concerned persons, whereas, petitioner has relied on merely affidavits and some revenue record. All these aspects have been taken into account and appreciated and the courts have found that the case pleaded by respondent No. 1 to be more probable at this stage of the matter. Respondent No. 1 has parted with huge amount of money and after receipt of the same, some pleas have been raised. He submits that it is not a case wherein discretionary powers of this court would be required to be invoked.

8. Having heard learned advocates as aforesaid, while the two courts have concurrently found that respondent No. 1 has been able to show *prima facie* case and balance of convenience lies in his favour and that he is likely to suffer irreparable loss. Appreciation on the available material at interlocutory stage in the face of concurrent decisions, it would be difficult to say that the same can be dubbed as sought on behalf of the petitioner. If the situation is balancing and the courts have considered the matter in one way in their discretion, it does not appear to be a case that this court should invoke its extra ordinary powers to dabble into the matter.

9. In the situation, it appears to be expedient that suit itself be proceeded with expeditiously, since it is being referred to by learned advocate for respondent No.1 - plaintiff that evidence has commenced in the suit.

10. For all above reasons, I am not inclined to interfere with the discretion exercised by the trial court, exercise of which is confirmed by the appellate court. Writ petition, as such, stands dismissed. Rule stands discharged. Trial court shall proceed with regular civil suit No. 297 of 2014 expeditiously and dispose of the same within a period of four months from the date of receipt of writ of this court. Needless to refer to that observations of the trial and appellate courts at the interlocutory stage of the matter as are appearing in the impugned orders as well as observations of this court in this order would have no influential value and should not have any efficacy whatsoever in decision of the suit which has to be decided on its own merits.

**[SUNIL P. DESHMUKH]
JUDGE**