

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

WRIT PETITION NO. 12624 OF 2017

1. Gundu s/o Kashinath Ghadse
Through his Power of Attorney Holder,
Sandipan s/o Laxman Ghadse,
Age : 42 years, Occu : Agri.
R/o Renapur, Tal. Renapur,
District : Latur .. Petitioner

versus

1. Angad s/o Nagnath Katale,
Age : 56 years, Occu : Agri.,
2. Balaji s/o Nagnath Katale,
Age : 50 years, Occu : Agri.,
3. Pralhad s/o Nagnath Katale,
Age : 65 years, Occu : Agri.,
4. Suresh s/o Nagnath Katale,
Age : 45 years, Occu : Agri.,
All r/o Renapur, Tq. Renapur,
District : Latur .. Respondents

WITH
WRIT PETITION NO. 12649 OF 2017

- Gundu s/o Kashinath Ghadse,
through his Power of Attorney holder,
Sandipan s/o Laxman Ghadse,
Age : 42 years, Occu : Agri.
R/o Renapur, Tal. Renapur,
District : Latur .. Petitioner

versus

1. Angad s/o Nagnath Katale,
Age : 56 years, Occu : Agri.,
2. Balaji s/o Nagnath Katale,
Age : 50 years, Occu : Agri.,

3. Pralhad s/o Nagnath Katale,
Age : 65 years, Occu : Agri.,

4. Suresh s/o Nagnath Katale,
Age : 45 years, Occu : Agri.,

All r/o Renapur, Tq. Renapur,
District : Latur

.. Respondents

Mr Nikhil Tekale, Advocate holding for Mr D. P. Palodkar,
Advocate for petitioner

Mr Shrikishan S. Shinde, Advocate for respondents no. 1 and 2
Mr Bhausahab B. Bhise, Advocate for respondent no. 3

CORAM : SUNIL P. DESHMUKH, J.

DATE : 21st January, 2019

ORAL JUDGMENT :

1. Heard learned counsel for appearing parties.

2. These two petitions are preferred by original plaintiff in regular civil suit bearing no. 48 of 2017 before joint civil judge, junior division, Renapur. In said suit, present respondents are defendants and have filed counter-claim. Both, the plaintiff in said suit and defendants no. 2 and 3 – who are counter-claimants, had filed applications for temporary injunction Exhibits – 5 and 17 respectively. Trial court under separate orders passed on 18-08-2017 had allowed application Exhibit – 5 for temporary injunction of original plaintiff and rejected the one under Exhibit – 17 of defendants - counter-claimants. As such, defendants – counter-claimants had been before the district court in two miscellaneous civil appeals bearing no. 67 of

2017 against order by trial court on Exhibit – 17 in counter-claim and 68 of 2017 taking exception to order on Exhibit – 5 in regular civil suit respectively. Under orders separately passed on 10-10-2017, both miscellaneous civil appeals had been allowed by appellate court - Principal District Judge, Latur, setting aside orders by trial court on Exhibits 5 and 17 and, as such, original plaintiff is before this court questioning validity, legality and propriety of orders in said miscellaneous civil appeals.

3. Learned counsel Mr Nikhil Tekale holding for Mr D. P. Palodkar, learned counsel appearing on behalf of petitioners quite persuasively submits that while discussing evidence as had been available at the stage of interlocutory applications, trial court had exercised discretion in favour of original plaintiff and such exercise of discretion ought not to have been disturbed by appellate court particularly when exercise of discretion by trial court cannot be faulted with on any ground.

4. Learned counsel submits, it is not disputed that concerned land is *inam* land and that for a while it was being cultivated through predecessor of present respondents – defendants. The person to whom the land had been given for cultivation is no more and since 2011 the land is in possession of the original plaintiff and that had been properly gauged by trial court with

reference to the documentary evidence on record. He submits that as on the date of the suit, it would surface that respondents – defendants' counter-claim would hardly be able to show that they were in possession of the land and trial court had precisely considered the same and had granted injunction in favour of original plaintiff – writ petitioner and had rejected application Exhibit – 17 by respondents – defendants in their counter-claim.

5. On the other hand, learned counsel Mr Shrikishan S. Shinde appearing on behalf of respondents no. 1 and 2 – original defendants no. 2 and 3 submits that there is voluminous documentary evidence on record to show that at least from 1966 onwards continuously the revenue record shows that their predecessor had been in possession of suit property. While there had been aberration in record, there had been litigation and the Collector had put the record straight showing respondents' predecessor in cultivation column. He submits, it is not denied that respondents are legal heirs of their predecessor. There is no record indicating that at any particular point of time, possession had been taken back or had been handed over by predecessor of present respondents to original plaintiff – writ petitioner. He submits that appellate court has properly appreciated the matter and has rightly considered that there is

higher degree of probability that respondents are in possession of property and accordingly refused consideration about handing over possession to original plaintiff as had been observed by trial court.

6. Having regard to aforesaid submissions, going by the antecedents at this stage, it would not be said that considerations which have weighed with appellate court are baseless much less without any substance while in the discretionary powers, appellate court has appreciated the matter at the stage at which it is pending and, as such, view by appellate court is difficult to be dubbed as, in any way, defective, deficient and much less erroneous. In further discretionary powers of this court, it is difficult to sit over the same and have a meddlesome approach in the matter.

7. In the circumstances, writ petitions are not being entertained and are thus disposed of.

8. The decisions by the courts including this court are at the interlocutory stage. Observations in orders by the courts on temporary injunction application, appeal therefrom and in writ petition shall have no influential value and shall not affect decision on merits in the suit.

9. Trial court to proceed with the matters and dispose of the same expeditiously preferably within a period of eight months from the date of receipt of writ of this order.

SUNIL P. DESHMUKH
JUDGE

pnd/-