

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2651 OF 2018

Shri Baliram Bhiku Shinde	.. Petitioner
Vs.	
Shri Bajirao Hari Shinde & Ors.	.. Respondents

Shri Rushikesh C. Barge, Advocate for petitioner.

None for respondents.

**CORAM : N.J. JAMADAR, J.
DATE : 22ND MARCH 2019**

P.C.

1. Heard the counsel for the petitioner on the question of admission.
2. The challenge in this petition is to the order passed by the District Judge, Satara on 30th April 2016 in Misc. Civil Appeal No.126 of 2015, whereby the appeal, preferred by the petitioner-defendant against an order of temporary injunction restraining him from causing obstruction to the possession of the respondent-plaintiff over the suit premises, i.e., agricultural land bearing Gat No.356 admeasuring 0.06 Are, was dismissed.
3. The learned counsel for the petitioner urged that the learned

Civil Judge committed an error in restraining the petitioner-defendant, who is the lawful owner of the suit land, which the petitioner has purchased from his predecessor in title, for a valuable consideration. The respondents are rank trespassers and they do not have a semblance of right, title and interest in the suit land. The learned counsel for the petitioner further urged that appellate court also failed to correct the discretion improperly exercised by the learned Civil Judge, and erred in dismissing the appeal by the impugned order dated 28th July 2018.

4. Upon perusal of the record, specially orders impugned, it becomes evident that the learned Civil Judge has ascribed justifiable reasons to record a finding that the long standing possession of the plaintiff over the suit land has been established. The District Court has also observed that the respondents have been in possession since long. It is pertinent to note that the Courts below have noted that the predecessor-in-title of the petitioner was not in possession of the suit land and had instituted proceedings to protect and/or recover possession of the suit land from the plaintiff-respondent.

5. It is evident that, in the face of the material to establish the possession of the plaintiff, the Courts below have recorded that mere mutation of the name of the petitioner and execution of the sale deed in favour of the petitioner, is of no avail.

6. The aforesaid approach of the learned Civil Judge and the learned District Judge appears to be justifiable. In view of the material to show that the respondent-plaintiff was in possession of the suit land since long, no error seems to have been committed in recording a finding that the plaintiff had made out a *prima-facie* case. The discretion seems to have been exercised properly. It does not seem to be a case wherein the extraordinary jurisdiction under Article 226 of the Constitution of India be exercised.

7. Hence the petition stands rejected.

It is, however, made clear that the aforesaid observations have been recorded only for the purpose of deciding the question as to whether the Writ Petition deserves to be entertained and the said observations shall not be construed as an expression of opinion on merits of the matter.

[N. J. JAMADAR, J.]