

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

**WRIT PETITION NO. 11929 OF 2016
WITH
CIVIL APPLICATION NO. 10569 OF 2019**

1. Kalpana w/o Balasaheb Babar
Age 41 years, Occ : Agriculture
r/o Wadner (bk) tq. Parner
District Ahmednagar
 2. Balasaheb s/o Kondiba Babar
Age 44 years, Occ : Agriculture,
r/o Wadner (bk), tq. Parner,
District Ahmednagar
- ... PETITIONERS

VERSUS

1. Anant s/o Murlidhar Dhumane
Age: 51 years, Occ : Agri.,
r/o Nighoj, tq. Parner,
District Ahmednagar
 2. Bapu s/o Hanuman Dhumane
Age 44 years, Occ : Agri.,
r/o Nighoj, tq. Parner,
District Ahmednagar
- ... RESPONDENTS

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Mr. N. K. Kakade, Advocate h/f Mr. D. R. Markad, Advocate for
petitioners.

Mr. N. V. Gaware, Advocate for respondent No.1 and 2.

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CORAM : R. G. AVACHAT, J.

**RESERVED ON : 14th OCTOBER, 2019
PRONOUNCED ON : 22nd JANUARY, 2020**

JUDGMENT :-

. Rule. Rule made returnable forthwith. Heard finally by consent of learned counsel appearing for the parties.

2. The challenge in this writ petition is to the order passed by the Ad-hoc District Judge-2, Ahmednagar on 20.10.2016 in Miscellaneous Civil Appeal No.33 of 2016, whereby the order passed by the Court of Civil Judge, Junior Division, Parner, District Ahmednagar, rejecting application Exhibit-5 (temporary injunction application) vide order dated 14.01.2015 in a suit being Regular Civil Suit No.565 of 2013, came to be set aside.

By the impugned order petitioners-defendants have been restrained from obstructing respondent-plaintiffs' possession over the suit land.

3. The petitioners are the original defendants and the respondents are the original plaintiffs in the suit. The subject matter of the suit is an agricultural land bearing Gat No.463/1. The respondents-plaintiffs purchased the suit land under two different sale-deeds. It is their case that originally it was the land bearing Gat No.463 owned by one Bashir

Momin and others. Western side 84 R land thereof came to be acquired by the Government for resettlement of project affected persons. Due to such acquisition, the land Gat No.463 came to be divided giving them numbers as Gat No.463/1 and 463/2. The land acquired for resettlement of project affected persons was given Gat No.463/2. The State Government allotted the said land to Shri Baban Tulshiram Murkute. Shri Baban, later on sold the said land to defendant No.1 on 23.11.2010.

4. According to the respondents-plaintiffs, there is North-South bandh that divided the land Gat No.463. Eastern portion is the suit land Gat no.463/1. The petitioners-defendants started obstructing the plaintiffs'-respondents' possession over the suit land and hence, suit for perpetual injunction restraining them from obstructing their possession over the suit land, came to be filed. Application (Exhibit-5) for temporary injunction came to be moved. The trial Court rejected the application. The plaintiffs/respondents, therefore, preferred miscellaneous appeal before the Court of Additional District Judge. The appeal came to be allowed, restraining the petitioners/defendants from obstructing the possession of the petitioners over the suit land. They are therefore before this Court.

5. Heard Shri N. K. Kakade, learned Advocate for the petitioners/defendants. He urged for remanding the matter back to the appellate Court after setting aside the impugned order. The civil application came to be filed seeking production of some of the documents in the nature of sale-deeds pertaining to the land Gat No.463. According to him, there was East-West bandh in the land Gat No.463. The suit land is to the Southern side of land Gat No.463/2. The suit land is in possession of the petitioners/defendants since the day of its purchase. Pomegranate orchard is in the suit land. A bore-well has also been taken. Photographs indicating the same have been produced before the trial Court. The application Exhibit-5 had rightly been rejected. The appellate Court, however, placed reliance on certain documents, namely, Mutation Entry No.563, letter by Land Acquisition Officer and the affidavit of the vendor who sold the land to the petitioners/defendants.

6. Learned Advocate for the petitioners would further submit that the description of the land purchased by the vendors of the plaintiffs/respondents differs with the description of the suit land. Learned Advocate sought for permission to produce on record certain

sale-deeds. He, then urged for setting aside the impugned order.

7. Shri N. V. Gaware, learned Advocate for the respondents-plaintiffs, would on the other hand submit that in exercise of jurisdiction under Article 227 of the Constitution of India, this Court cannot interfere with the order passed after exercise of due discretion. He opposed for allowing the civil application seeking production of the documents. According to him, if a person is in a settled possession of a property belonging to rightful owner, the rightful owner shall have to take recourse to law. He cannot take law in his own hand and evict the trespasser and interfere with possession. In support of his submissions learned Advocate relied on the judgment of the Hon'ble Supreme Court of India in case of *Rama Gowda (D) by Lrs. Vs. M. Varadappa Naidu (D) by Lrs.*, reported in *2004 AIR (SC) 4609*. He, then urged for dismissal of the writ petition.

8. Originally, it was land bearing Gat No.463. 87 R land therefrom came to be acquired for rehabilitation of project affected persons. On such acquisition having been made, land Gat No.463 came to be divided. The land that was acquired, came to be given Gat No.463/2. Remaining land in Gat No.463 came to be recognised as Gat No.463/1. The land Gat No.463/2 came to be allotted to one Shri Baban Murkute.

Then he sold it to petitioner No.1 on 23.10.2010.

The question is of location of the lands owned and possessed by the petitioners and the respondents. The respondents-plaintiffs have come with a suit. Necessarily, burden of proof to make out a prima facie case rests on them. The appellate Court appears to have ignored this principle.

9. Close reading of the plaint would suggest that the respondents/plaintiffs have based their claim of possession on the strength of sale-deed(s). The description of the suit land (Gat No.463/1) is as under:

East -	Gat No.481 and road
West -	Gat No.463/2
North -	Gat No.462
South -	Gat Nos. 469 and 470

Whereas, in the sale-deed dated 18.07.1996, on the basis of which the respondents-plaintiffs claim possession on the suit land, the description thereof given in the sale-deed is as under :

East -	Gat No.481 and road
West -	Gat No.464
North -	Gat No.462
South -	Gat No.469 and 470

10. The respondents-plaintiffs shall not be allowed to travel beyond the sale-deed. In the plaint, there is no whisper about the facts, such as, description of the suit land given in the documents like Mutation Entry No.563, land allotment register and the letter given by the Deputy Director (Resettlement) dated 06.06.1992. The trial Court has rightly observed that the case of the petitioners/defendants that they have planted pomegranate orchard and has taken bore-well have not been specifically disputed. The photographs of the land have also been produced on record. Moreover, a look at description of the land purchased by the vendor, who in turn sold it to the respondents-plaintiffs would indicate that description given therein does not match with the description given in the plaint.

It appears that the order passed by the appellate Court is inconsistent with the material on record. The order is found to be perverse. The respondents-plaintiffs have to stand on their own legs. The civil application seeking production of documents in the nature of sale-deeds deserves to be allowed, since the documents have bearing on the outcome of the suit. The impugned order needs to be set aside with a direction to the appellate Court to decide the appeal afresh. In the result, interference with the impugned order is warranted. The

appellate Court shall not be influenced by the observations made herein-above.

The writ petition therefore partly succeeds in terms of the following order :

ORDER

- (i) The writ petition is partly allowed.
- (ii) Civil Application No.10569 of 2019 is allowed.
- (iii) The impugned order passed by the appellate Court is set aside. The matter (appeal) is remanded back to the appellate Court to decide it afresh.
- (iv) Rule is partly made absolute in above terms.

[R. G. AVACHAT, J.]

Learned counsel for the petitioners prays to direct the parties to maintain status-quo. The request for maintaining status-quo is turned down.

[R. G. AVACHAT, J.]

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