

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

921 WRIT PETITION NO.2241 OF 2020

Shahaji Sakharam Gaikwad & Anr.

... PETITIONERS
(Orig. Defendants)

VERSUS

Sow. Kantabai W/o Uttam Yadav & Anr.

... RESPONDENTS
(Orig. Plaintiffs)

...
Advocate for the Petitioners : Mr. S. G. Magre h/f Mr. M. L. Dharashive
Advocate for the Respondent Nos.1 & 2: Mr. S. N. Lale Yelwatkar
...

CORAM : N. B. SURYAWANSHI, J.

DATE : 23rd November, 2021

PER COURT :

1. Heard the learned advocates for the respective parties.
2. This petition filed by the Petitioners/Original Defendants challenges the order passed by the learned District Judge-4, Latur in Misc. Civil Appeal No.69/2019, thereby allowing the application (Exhibit-5) filed by the Respondents/Original Plaintiffs, by setting aside the said order passed by the 2nd Joint, Civil Judge, Junior Division, Ausa, rejecting the application (Exhibit-5).

3. The Regular Civil Suit No.10/2019 was filed by the Plaintiffs for perpetual injunction and a relief of restraining the Defendants from interfering in the peaceful possession of the Plaintiffs in the suit property at Sr. No.1211 on the record of Grampanchayat bearing Property No.1179 admeasuring east-west 35 feet and south-north 56 feet bounded as mentioned in the plaint. In the suit, application – Exhibit-5 came to be filed seeking temporary injunction against the Defendants. The Trial Court rejected the said application. The Plaintiffs, thereafter, filed Misc. Civil Appeal No.69/2019 challenging the order passed by the Trial Court and the Appellate Court has allowed the appeal as well as application (Exhibit-5). Hence, the present petition.

4. Heard the learned advocate for the Petitioners and learned advocate for the Respondents.

5. The learned advocate for the Petitioners contends that the suit itself is not maintainable as the suit property belongs to Wakf Board and Civil Court has no jurisdiction to decide the dispute about the suit property. He further submits that the Trial Court has rightly rejected the application (Exhibit-5) by giving proper reasons and Appellate Court has committed an error in allowing the appeal and sitting aside the Trial Court's order. According to him, the Appellate Court has failed to assign proper reasons while allowing the appeal. He, therefore, submits that the

impugned order passed by the Appellate Court is liable to be quashed and set aside and the writ petition deserves to be allowed.

6. The learned advocate for the Respondents, on the other hand, supports the impugned order. He submits that the Appellate Court has rightly considered the record and by assigning reasons, was justified in allowing the appeal.

7. The case of the Respondents/Plaintiffs is that the suit property stands in their name in the Grampanchayat record and they are in possession of the same. They want to carry out construction on their property. However, the Petitioners/Defendants are making obstruction to their possession over the suit property. The Respondents/Plaintiffs in support of their suit have relied on various documents, including Sanad of the land allotted to Uttam Yadav, who is the husband of Respondent/Plaintiff No.1 and father of Plaintiff No.2, by which, vide Entry No.104 area of 60 sq. meters of Gaothan land of Borphal was allotted to Uttam Yadav. The Respondents/Plaintiffs also produced receipts of payment of electricity bills and bore-well charges, which show that the Respondents/Plaintiffs dug a bore-well in the suit property and have also taken electricity connection. The Respondents/Plaintiffs have also produced order dated 02-07-2018 passed by the Sub-Divisional Officer, Ausa in respect of the payment of compensation for the valuation

of house constructions made by the encroachers on Government land bearing Survey No.365 before the Sub-Divisional Officer. The Plaintiff No. 2 has produced Namuna No.8 extract of the house property No.1065. The Plaintiffs/Respondents have also relied on the judgment dated 29-10-2010 in R.C.S. No.467/2011, Uttam Yadav Vs. Bajarang Jamadar of the Civil Court, Ausa, whereby a decree of permanent injunction in respect of the suit property is granted in favour of Uttam Yadav.

8. In view of the aforestated record, the Appellate Court was right in coming to the conclusion that the Plaintiffs have prima facie proved that they are in possession of the suit property and the Defendants are making obstruction in their possession of the suit property. The Defendants have not shown their prima facie right or interest in the suit property. The Appellate Court was justified in negating the contention of the Petitioners/Defendants that the Plaintiffs/Respondents are trying to raise construction illegally without obtaining any permission from the Government or from the Grampanchayat, by observing that the Government or concerned Grampanchayat would take necessary action against the Respondents/Plaintiffs in accordance with law.

9. The contention of the Petitioners/Defendants that the suit property belongs to Wakf Board is negated by the Appellate Court, by holding that the application filed by the Defendants under Order 7 Rule

11(d) of the Code of Civil Procedure was rejected by the Trial Court. The Appellate Court was therefore justified in coming to the conclusion that prima facie case is made out by the Plaintiffs and the balance of convenience is in favour of Plaintiffs and if the temporary injunction is not granted, the Plaintiffs would suffer irreparable loss. The Appellate Court was therefore right in granting temporary injunction in favour of the Plaintiffs/Respondents.

10. For the reasons stated here-in-above, no case is made out by the Petitioners to interfere in the well reasoned order passed by the Appellate Court. There is no substance in the Petition. Hence, the Petition is dismissed. No costs.

(N. B. SURYAWANSHI, J.)

Sameer