

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****WRIT PETITION NO. 9871 OF 2019****WITH****CIVIL APPLICATION NO. 6945 OF 2020**

1. Sarjerao S/o Nathu Bangar,
Age : 61 Years, Occ. Agriculture,
2. Baban S/o Nathu Bangar,
Age : 59 Years, Occ. Agriculture,
3. Sabhakar S/o Nathu Bangar,
Age : 55 Years, Occ. Agriculture
4. Housabai W/o Sarjerao Bangar,
Age : 36 Years, Occ. Agriculture,
5. Madhukar S/o Sarjerao Bangar,
Age : 24 Years, Occ. Agriculture
6. Dilip S/o sarjerao Bangar,
Age : 24 Years, Occ. Agriculture,

All resident of Waghira, Tq. Patoda,
District Beed.

7. Ashabai W/o Dadasaheb Nagargoje,
Age : 33 Years, Occ. Agri & Household,
R/o. Yewalawadi Tq. Patoda,
District : Beed.
8. Ayodhya W/o Vitthal Nagargoje,
Age : 27 Years, Occu. Agri. & Household,
R/o. As above.

..PETITIONERS
(Orig. Defendants)

VERSUS

1. Namdeo S/o Keru Bangar,
Age : 68 Years, Occ. Agriculture,
2. Kundalik S/o Keru Bangar,
Age : 72 Years, Occu. Agriculture,
Both resident of Waghira Tq. Patoda,
District : Beed.

..RESPONDENTS

(Orig. Plaintiffs)

....
Advocate for the Petitioners : Mr. S.V. Dixit
Advocate for respondent Nos. 1 & 2 : Miss Priyanka R.
Deshpande
....

CORAM : MANGESH S. PATIL, J.

Reserved on : 06.01.2021
Pronounced on : 01/02/2021

JUDGMENT:

Heard. Rule. The rule is made returnable forthwith. The learned Advocate for the respondents waives service. With the consent of both the sides, the matter is heard finally at the state of admission.

2. The petitioners are the original defendants, in a suit filed by respondents bearing Regular Civil Suit No. 230 of 2016 pending on the file of the learned Civil Judge, Junior Division, Patoda.

3. The respondents claim that one Manaji was the common ancestor having 4 sons, two of them had died issueless and only Vithal and Panduarng survived. The petitioners are the heirs of Pandurang and the respondents are the heirs of Vitthal. Manaji was the exclusive owner of the lands bearing

Survey No. 157 and 158, totally aggregating 15 Hector, 71 Are. They further averred that these lands were further sub-divided 157-A and 157-AA and 158-A and 158-AA. They are the owners in exclusive possession of 157-AA and 158-AA, totally admeasuring 7 Hector 85 Are. This property is being described as the suit property. Claiming that the petitioners are trying to forcibly evict them and are obstructing their possession over the suit property filed a false suit bearing Regular Civil Suit No. 206 of 2016 seeking that the entire land bearing gat No. 540 of which the suit property is half a portion and perpetual injunction restraining the respondents from obstructing their possession. Hence, they claim declaration regarding they being the exclusive owner of the suit property and perpetual injunction restraining the petitioners from obstructing their possession therein.

4. By filing an application under Order XXXIX Rule 1 of the Code of Civil Procedure, the respondents claimed temporary injunction in terms of the main relief. By the order dated 18.06.2018, the learned Civil Judge rejected the application. The respondents challenged that order by preferring Misc. Civil Appeal No. 49 of 2018 and by the impugned Judgment and order the learned Additional District Judge, quashed and

set-aside the order passed by the learned Civil Judge and allowed the application for temporary injunction as prayed for. Hence, this Writ Petition under Article 227 of the Constitution of India.

5. The learned Advocate Mr. Dixit, for the petitioners would submit that the order under challenge is grossly erroneous and demonstrates utter lack of application of mind while deciding an appeal under Section 104 read with Order XLIII of the Code of Civil Procedure. Without there being any apparent illegality committed by the learned Civil Judge in refusing the temporary injunction, the impugned order substitutes the discretion which is not permissible in law.

6. The learned Advocate Mr. Dixit, would submit that already the petitioners had filed Regular Civil Suit No. 206 of 2016 seeking declaration about the entire land Gut No. 540, of which the present suit property is half a portion, is exclusively owned and possessed by them. Unfortunately, they could not succeed in getting an order of injunction protecting their possession which Judgment and order they have challenged in the Appeal which is still pending before the District Court. He would further

point out that since the respondents have filed the suit at later point of time, the petitioners sought to stay it under Section 10 of the Code of Civil Procedure. The learned Civil Judge allowed their application and directed Regular Civil Suit No 230 of 2016 of the respondents to be stayed. The challenge of the respondents to that order has been refuted by this Court in Writ Petition No. 2318 of 2018 by the order dated 12.03.2018. The learned Advocate would submit that in spite of such state of affairs, the respondents claimed temporary injunction and by the impugned order the learned District Judge has allowed that application even though the suit of the respondents has been stayed.

7. On facts, the learned Advocate Mr. Dixit, would submit that the respondents are not at all related to the petitioners. Respondents' ancestor was staying in the suit property as servant of the petitioners' ancestor. There was no sub-division ever effected of the land survey No. 157 and 158. A letter to that effect is also produced on record which is issued by the concerned Dy. Superintendent of Land Record (Exh. 'K'). He would submit that by resorting to some manipulation of the revenue record i.e. Khasra Patrak, the respondents could manage to record their names to the suit property. However,

the possession still continues with the petitioners and ignoring all such state of affairs, the learned District Judge has held them entitled to temporary injunction. The impugned Judgment and order being perverse, arbitrary and capricious be quashed and set-aside.

8. The learned Advocate for the respondents would submit that even if their suit was stayed by resorting to the provision of Section 10 of the Code of Civil Procedure that provision does not preclude the trial Court from passing interlocutory orders. She would cite the decision of the Supreme Court in the case of **Indian Bank Vs. Maharashtra State Co-operative Marketing Federation Limited ; AIR 1998 S.C. 1952**. She would therefore, submit that there is no question of any jurisdictional error in entertaining an application for temporary injunction by the trial Court and the Appellate Court.

9. The learned Advocate for the respondents would then submit that there is long standing revenue record in favour of the respondents which has a presumptive value under the provisions of Maharashtra Land Revenue Code. Though, the petitioners are averring that the respondents could get their name mutated by getting executed sham sale deeds in the year 1995, there was no immediate challenge/ dispute raised

by the petitioners at an earlier stage. They have filed suit in the year 2016. At this juncture, such long standing revenue record coupled with the subsequent transactions and mutations are sufficient to demonstrate *prima facie* case in favour of respondents and obviously the balance of convenience has been in their favour. Still, ignoring such factual scenario, the learned Civil Judge had erroneously refused temporary injunction. The order was grossly perverse and arbitrary and was rightly interfered with and reversed by the learned District Judge, in the appeal under Section 104 of the Code of Civil Procedure. No error is committed by the learned Additional District Judge in reversing the order of the trial Court.

10. To begin with, let us consider the preliminary objection touching the aspect of scope of Section 10 of the Code of Civil Procedure, which reads thus :-

" Section 10. Stay of suit - No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the

supreme Court"

Explanation- The pendency of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action."

(Emphasis supplied)

11. As can be easily appreciated, this provision only contemplates stay of the 'trial' of the suit and does not intend to preclude a 'trial' Court from entertaining a suit filed subsequently and even passing interlocutory orders. It is trite that a trial of the suit commences with the framing of the issues. That stage has not reached in the respondents' suit. Both the Court below have not committed any illegality in entertaining and deciding the application of the respondents for temporary injunction. Without indulging in further discussion, it would be suffice to refer to and rely upon the decision of the Supreme Court in the case of Indian Bank (supra). Particularly, the observations in paragraph No. 8 which read thus :-

" Therefore, the word " trial" in Section 10 will have to be interpreted and construed keeping in mind the object and nature of that provision and the prohibition to proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit. The object of the prohibition

contained in Section 10 is to prevent the Courts of concurrent jurisdiction from simultaneously trying two parallel suits and also to avoid inconsistent findings on the matters in issue. The provisions is in the nature of a rule of procedure and does not affect the jurisdiction of the Court to entertain and deal with the later suit nor does it create any substantive right in the matters. It is not a bar to the institution of a suit. It has been construed by the Courts as not a bar to the passing of interlocutory orders such as an order for consolidation of the later suit with the earlier suit, or appointment of a Receiver or an injunction or attachment before Judgment. The course of action which the Court has to follow according to Section 10 is not to proceed with the "trial" of the suit but that does not mean that it cannot deal with the subsequent suit any more or for any other purpose. In view of the object and nature of the provision and the fairly settled legal position with respect to passing of interlocutory orders it has to be stated that the word 'trial' in Section 10 is not used in its widest sense."

12. Therefore, the submissions of the learned Advocate for the petitioners that the Courts below have over looked the

direction under Section 10 to stay the suit is not legally tenable.

13. Obviously, while exercising the Writ Jurisdiction, this Court cannot go into all the disputed facts and circumstances much less at such a nascent stage of the suit. Still, as can be ex-facie appreciated, though the petitioners are flatly refuting the respondents to be related to them, even they admitted that the respondents' ancestor was an agricultural labour employed by their ancestor and was occupying some portion of the land for staying there.

14. Apart from such vital stand of the petitioners, the revenue record, *prima facie* shows that even the name of the ancestor of the respondents Keru was recorded against the land stated to be survey No. 157-AA and 158-AA i.e. the suit property. The extract of Khasra Patrak *prima facie* shows that the land Survey No. 157 and 158 were further divided as 'A' and 'AA'. The name of Nathu and Keru was recorded to their corresponding portions "A" and "AA" respectively and continued to be so for years together. Though now it is being pointed out that the department of land record now informs that the land Survey No. 157 and 158 were never sub-divided, it is a matter which will have to be pondered upon during the

course of the trial. The fact remains that for years together, the name of the respondents ancestor continued to be recorded against the suit property and neither the petitioners nor their ancestors at any point of time made any attempt to challenge it before filing the suit in the year 2016.

15. Again, the respondents are stated to have purchased a share of the suit property from its co-sharer Raosaheb under two sale-deeds in the year 1995 and accordingly even the Mutation Entries 752 and 753 were effected, whereby the respondents' name was mutated to the entire suit property. Though, mutations had taken place in the year 1996, at no point of time the petitioners sought to challenge it, till they filed the suit in the year 2016.

16. It is trite that though the revenue record does not create or destroy title to an immovable property, it does carry a presumptive value under the provisions of Section 157 under the Maharashtra Land Revenue Code. This is what precisely seems to have been clearly over looked by the learned Civil Judge, who had apparently got swayed away by the fact that the department of land record has refuted any claim of subdivision of the original land survey Nos. 157 and 158.

17. The learned Civil Judge had also erroneously observed that the suit property was not identifiable for want of particulars regarding their boundaries which observations were clearly perverse in as much as a rough sketch as contemplated under Order VII Rule 3 of the Code of Civil Procedure was annexed to the plaint.

18. Taking note of such an approach of the learned Civil Judge, the learned District Judge by the impugned Judgment and order is justified in quashing and setting-aside the order of the trial Court and granting temporary injunction in favour of the respondents. It was a fit case where the appellate Court could have exercised the discretion while entertaining an appeal under Section 104 read with Order XLIII of the Code of Civil Procedure. No error or illegality committed by the learned District Judge in passing the Judgment and order under challenge.

19. The Writ Petition is dismissed.

The rule is discharged.

20. In view of dismissal of Writ Petition, Civil Application No. 6945 of 2020 stands disposed of.

(MANGESH S. PATIL, J.)

21. After pronouncement of the Judgment, the learned Advocate for the petitioners submits that there was ad-interim relief operating in favour of the petitioners till date and it may be extended for sufficient period to enable them to approach the Supreme Court.

22. Since the ad-interim relief has been in operation till date, it stands extended for a further period of three weeks.

(MANGESH S. PATIL, J.)

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