

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8307 OF 2020

Bhaskar Murlidhar Lahane and others ... Petitioners

Versus

Shivaji Ramrao Pawar and others ... Respondents

• • • •

Mr. A. A. Nimbalkar, Advocate for the petitioners

Mr. H. V. Tungar, Advocate for the respondents

• • • •

CORAM : R. G. AVACHAT, J.

RESERVED ON : 28th JANUARY, 2021

PRONOUNCED ON : 16th FEBRUARY, 2021

PER COURT :-

. Heard learned counsel for the parties.

2. This writ petition is directed against the orders dated 07.07.2020 passed by the Joint Civil Judge, Junior Division, Patoda, on application for temporary injunction (Exh.5) in a suit, being Regular Civil Suit No.110 of 2020 and the order dated 03.11.2020 passed by the District Judge-5, Beed, in Miscellaneous Civil Appeal No.34 of 2020, confirming the order dated 07.07.2020. By the

impugned order dated 07.07.2020, application moved by the petitioners-plaintiffs for temporary injunction, came to be rejected. The said order has been confirmed by the learned District Judge-5 in M.C.A. No.34 of 2020. The petitioners-plaintiffs are therefore before this Court.

3. The petitioners-plaintiff Nos. 1 and 3, are the brothers. They had one more brother – Vijay (deceased) i.e. petitioner No.4. Petitioner No.2 is their father. The petitioners claimed title to the land *gut* No.657. They also claimed possession over the said land. The respondents-defendants are alleged to have been obstructing the petitioners' possession over the suit land. The suit (RCS No.110 of 2020) is therefore filed for relief of declaration that the respondents-defendants do not have right, title and interest in the suit land. Consequential relief for perpetual injunction has also been asked for.

4. The petitioners-plaintiffs claimed title and possession by virtue of a sale-deed dated 10.11.1971 and entries in the revenue record indicating them to be the holders in possession of the suit land.

5. The respondents-defendants contended before the trial Court that the suit land originally belonged to Ganpati Bhakre, respondents No.1 and 3 desired to purchase the said land. They agreed to purchase the same for Rs.8000/-. Respondent No.1 was illiterate. His father-in-law had sold some of his land. He had, therefore, funds with him. Since he did not have a son, he had entrusted the money with respondent No.1. Plaintiff No.2 and defendant No.1 agreed to purchase the suit land, jointly. Both of them have close relationship inter-se. Plaintiff-petitioner No.2 is the husband of respondent No.1's sister. Taking advantage of illiteracy and close relationship, the plaintiff No.2 purchased the suit land in his name alone. Since the day of purchase, half of the suit land has been in possession of respondents-defendants. The petitioners had filed suit (R.C.S. No.97 of 1978) for partition and separate possession. The description of the land therein would indicate that only $\frac{1}{2}$ portion of the present suit land was the subject matter of the said suit. The same indicates the petitioners to have acknowledged the respondents to have been in possession of half of the land in *gut* No.657. During "pik pahani", the respondents have been found in possession of half of the land in *gut* No.657. Their names, therefore,

came to be recorded in cultivation column of 7/12 extract.

6. Shri A. A. Nimbalkar, learned Advocate for the petitioners would submit that the suit land has been purchased way back in 1971. The effect thereof has been reflected in the revenue record. So far as regards description of the suit land given in R.C.S. No.97 of 1978, he would submit that it was the entire survey numbers 242(1) and 243(1), wherein each of them had claimed $1/8^{\text{th}}$ share. It necessarily comes to $1/4^{\text{th}}$ share in the land *gut* No.657. According to the learned Advocate, the respondents have been unsuccessful in Vahiwat case. The order therein has attained finality. There is no material to suggest the respondents to have any concern much less possession over the suit land. Both the Courts below gave undue importance to the pleadings in R.C.S. No.97 of 1998. None of the respondents was a party to the said suit. The petitioners have nowhere acknowledged the respondents to have possession or even concerned with the suit land. The principle of estoppel has been wrongly invoked. According to him, the orders impugned herein are inconsistent with the material on record. He, therefore, urged for allowing the writ petition.

7. Shri H. V. Tungar, learned Advocate for the respondents

would on the other hand submit that the petitioners-plaintiffs must succeed on the strength of their own case, not on the weakness of the respondents. He would further submit that the pleadings must be construed in its entirety. Record of right is not document of title. A party may not be permitted to resile from his admission. Admission made in the pleadings is binding on the party *proprio vigore* in the subsequent proceedings. In support of these submissions, learned Advocate has relied on the following authorities.

- (i) Narain Prasad Aggarwal (D) By LRS vs. State of Madhya Pradesh – AIR 2007 SC 2349
- (ii) State of Haryana vs. M. P. Mohla – (2007) 1 SCC 457
- (iii) Muddasani Venkata Narsaiah (D) Th. Lrs. vs. Muddasani Sarojana – AIR 2016 SC 2250.

8. True, both the Courts below have exercised their discretion in refusing to grant relief of temporary injunction. It may therefore be said that, this Court in exercise of writ jurisdiction should be slow in interfering with the orders passed in exercise of discretionary jurisdiction.

Petitioner Nos. 1 and 3 are the brothers and petitioner No.2 is their father. Deceased petitioner No.4 was brother of petitioner Nos. 1 and 3. The suit land is *gut* No.657. It admeasures 7 Hectares 15 Ares. *Gut* No.657 has been formed of erstwhile survey

numbers 242/2 and 243/1 purchased by Murlidhar, father of petitioner Nos. 1, 3 and 4. There is on record a sale-deed dated 10.11.1971, whereunder, Murlidhar purchased half of the land in Survey No.242/1 and 243/1. Both these survey numbers totally admeasured 19 Acres 29 Ares and 16 Acres 29 Ares, respectively. Half of the portion thereof was purchased by Murlidhar under the said sale-deed for consideration of Rs.8,000/- He was put in possession of the land purchased by him. The effect of the sale-deed has been reflected in the revenue record, vide Mutation Entry No.361. The said effect has been continued in the revenue record till date. Except in the year 1998, name of the respondents was recorded to some portion of the suit land, *gut* No.657. The entries in cultivation column was recorded after inspection of the land and recording the statements of adjoining land owners. The petitioners had preferred appeal against the order recording name of respondent Balasaheb in cultivation column. The said appeal was allowed by the Sub Divisional Officer, Beed. Respondent – Balasaheb was successful before the Additional Collector in appeal preferred against the order of the Sub Divisional Officer. The petitioners therefore preferred revision petition to the Deputy Commissioner. The petition was allowed. The order in favour of respondent –

Balasaheb was set aside. The appeal preferred by Balasaheb to the Principal Secretary, Revenue, was dismissed. Writ Petition No.7357 of 2019 preferred by Balasaheb against the order passed by the Principal Secretary, came to be dismissed vide order dated 09.09.2019. The said order has attained finality. As such, entries in the revenue record do not support claim of the respondents.

9. True, petitioner No.1 Bhaskar had filed a suit against his father Murlidhar and two brothers for partition and separate possession of the land Survey No.242/1 and 243/1. It was a suit No.97 of 1978. The lands in the said suit were described as under:

S. No.	Gut No.	H. R.	Rs.	Paise	Share
242/A	657	} 7-15	12-	00	2 annas (1/8th)
243/1	do		10-	28	do.

Respondents and both the Courts below placed strong reliance on the description of the lands in R.C.S. No.97 of 1978. According to them, had the petitioners been owners in possession of entire land in Gut No.657, they would not have described it and claimed 1/8th share, each therein. According to the respondents and both the Courts below as well, remaining half of the land purchased under the sale-deed dated 10.11.1971 was not the subject matter of

the suit (R.C.S. No.97 of 1978) as the petitioners acknowledged that half of the portion of the land *gut* No.657 to have been owned and possessed by the respondents.

To this submission, learned Advocate for the petitioners would submit that whole of the land in Survey Nos.242/1 and 243/1 was the subject matter of the suit wherein each of the petitioner necessarily has 1/8th share. In paragraph 6 of the plaint, it has been averred that the plaintiffs and defendant Nos. 1 to 3 (petitioners) together have one half share in the whole of the suit lands and out of the said $\frac{1}{2}$ share the plaintiff has $\frac{1}{4}$ th share while the defendant Nos. 1 to 3 each have $\frac{1}{4}$ th share.

10. Close reading of the pleadings in R.C.S. No.97 of 1978 would reveal that only half of the land in *gut* No.657 was the subject matter of the suit.

I am afraid as to how the pleadings in R.C.S. No.97 of 1978 would be of any assistance to the respondents herein. The land has been purchased way back in 1971. The respondents claimed that half of the consideration amount was paid by respondent No.3 – Balasaheb. From 1971 to this day, none of the respondents have filed any suit to claim title to the suit land. It is only in 1998 name of

respondent Balasaheb was recorded in cultivation column of the suit land. The said entry short lived, for the reason that in the revenue proceedings the respondents have been unsuccessful. They, therefore, cannot take any assistance of the factum of recording of Balasaheb's name in the cultivation column in 7/12 extract. Sale-deed is a document of title. By virtue of sale-deed dated 10.11.1971, Murlidhar became owner in possession of half of the land in Survey No.242/1 and 243/1 i.e. entire land in *gut* No.657. The R.C.S. No.97 of 1978 was between the petitioners and their father, Murlidhar. A sketch indicating how the partition has been effected was the part of the compromise decree. It has to be taken that when the suit was filed and compromised, relations between the petitioners and the respondents must have been good. Had really the respondents been in possession of half portion or even any portion of the suit land in the sketch, their names would have been recorded as holders of the remaining portion of the land *gut* No.657, merely because only half of the land purchased under the sale-deed dated 10.11.1971 was the subject matter of the suit. One cannot jump to the conclusion that the remaining land was necessarily belonged to the respondents. Principle of estoppel under Section 115 of the Evidence Act has been wrongly invoked, as has been rightly submitted by the learned

Advocate for the petitioners that for the principle of estoppel, there has to be some representation by one person to the other. The other must have acted upon such representation and changed his position. Unless and until the suit goes for trial and the respondents make out their case of having been in possession of half of the suit land by virtue of an understanding that dates back of 1971, they cannot be observed to have been in possession of any portion of the suit land. Both the Courts below gave undue importance to the pleadings in R.C.S.No.97 of 1978. It was a suit inter se the petitioners and their father Murlidhar. Decree passed in the said suit would not estop the petitioners from claiming their title and possession over the entire land in *gut* No.657 since the document of title is in their favour and entries in the revenue record reinforced the same. For these reasons, the orders impugned in this writ petition need to be set aside.

The writ petition is therefore allowed in terms of prayer clauses "A" and "B". As such, application Exh.5 in the suit is allowed.

[R. G. AVACHAT, J.]

SMS