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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3266 OF 2020

Krishna N. Ambekar ...Petitioner
V/s.
Sanjay R. Ambekar and ors. ...Respondents.

Mr. A.B. Tajane for the Petitioner.
Mr. D.S. Patil for the Respondents.

CORAM : N.R. BORKAR, J.
DATE : 20.08.2021.

P.C. :

1. This petition takes an exception to judgment and order dated 12.4.2018 passed by the District Judge-1, Khed-Rajgurunagar, Dist. Pune in Miscellaneous Civil Appeal No. 27 of 2015.
2. The respondents herein filed a suit for perpetual injunction against the petitioner in relation to land bearing Gat No.28 of Mouze Chikhali, Taluka Ambegaon, Dist. Pune. Alongwith the suit, an application for temporary injunction was filed. It was prayed that the petitioner be restrained from causing obstruction to the peaceful possession of the respondents over the suit land. The learned trial court, after hearing both parties, rejected the said application by order dated 10.9.2015. Being aggrieved by the said order of the trial court, the respondents filed Miscellaneous Civil Appeal No. 27 of 2015. The learned appellate court allowed the said appeal and granted the temporary injunction in favour of the respondents.

3. I have heard the learned counsel for the petitioner and the learned counsel for the respondents.

4. The learned counsel for the petitioner submits that the grandfather of the petitioner was the tenant in the suit land and his tenancy was never terminated. It is submitted that the trial court on the basis of documents on record was justified in rejecting the application filed by the respondents. It is submitted that the learned appellate court ought not to have interfered with the well reasoned order of the trial court by ignoring the documents on record. It is submitted that the learned appellate court has not taken into consideration the legal position in respect of protected tenant and thus committed an error in allowing the appeal. It is submitted that the order passed by the appellate court thus needs to be quashed and set aside.

5. On the other hand, the learned counsel for the respondents submits that the respondents are the owners of the suit land. It is submitted that the grandfather of the petitioner was never protected tenant in the suit land. It is further submitted that the entry in revenue record showing the grandfather of the petitioner as tenant in the suit land was deleted by the order of competent authority in the year 1985, as it was found that the grandfather of the petitioner was not the tenant in the suit land. It is submitted that the said order of deletion till date has not been challenged. It is submitted that the learned appellate court was therefore, justified in granting temporary injunction.

6. Admittedly, the respondents are the owners of the suit land. The petitioner claims that his grandfather was tenant in the suit land. However, it was found by the competent authority, i.e. Additional Tahsildhar that the grandfather of the petitioner was not the tenant in the suit land and entry in that respect was deleted on 5.2.1985 from the revenue record. Admittedly, at that time grandfather of the petitioner namely Shiva K. Ambekar was alive and he died on 19.6.1991. The grandfather of the petitioner has, however, not taken any exception to the said order of Additional Tahsildhar. The learned counsel for the petitioner submits that no notice was issued to the grandfather of the petitioner before deleting his name from the revenue record. However, the said order is not challenged till date on the said ground.

7. The learned counsel for the petitioner submits that the petitioner has filed the proceedings before the Tenancy Tribunal to declare him tenant. However, the fact remains that the order of Additional Tahsildhar has not been challenged till date.

8. The learned counsel for the petitioner next submits that the learned appellate court was not justified in relying upon the entries in the revenue records to hold that the respondents are in possession of the suit land as they are meant for only fiscal purpose. Suffice is to say that in absence of challenge of the order of Additional Tahsildhar, no error can be found with the order of the appellate court holding that the respondents in possession of the suit land as admittedly, they are owners of the suit land.

9. Considering the above facts and circumstances, no interference is called for in the impugned judgment and order. In the result, the following order is passed.

ORDER

- 1] Writ Petition is dismissed.

- 2] Needless to mention that the trial court shall not get influenced either by the order of the appellate court or of this court while deciding the suit on merits.

[N.R.BORKAR, J.]