

(1)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.699/2018

Suraj s/o Vijayrao Pote

Vs.

Ramkrushna s/o Pandurang Waghmare and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. P. R. Agrawal, Advocate for petitioner.

Ms. T. Khan, AGP for respondent No.5

CORAM : AVINASH G. GHAROTE, J.

DATED : 08/10/2021

1] Heard learned counsel for the petitioner and learned AGP for respondent No.5. None for the respondent Nos.1 to 4 though served.

2] It is the contention of Mr. Agrawal, learned counsel for the petitioner that Vatsalabai grandmother of the petitioner was in cultivating possession of the land bearing Survey Nos.10/3 and 81/1 which are now Gat No.31, Admeasuring 2 Hectare 34 R. situated at Mouza Adula Bazar, Tahsil Daryapur, and on her demise the petitioner has come into possession of the said land. There were proceedings initiated by Vatsalabai, during her life time claiming that she was a tenant of the above lands and therefore, had a statutory right to purchase the same under the provisions of the Bombay

(2)

Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958, which application came to be allowed by the Tenancy Tahsildar, Daryapur by order dated 10.06.1988. An appeal there against, being allowed by the Appellate Authority by an order dated 13.02.1989. A revision thereof was filed before the Maharashtra Revenue Tribunal, Nagpur which set aside the order in appeal and remanded the matter back to the Tahsildar for a fresh enquiry by an order dated 01.04.1999, which proceedings are still pending.

3] In the meantime, due to demise of Vatsalabai, the petitioner claiming to be her legal heir, had applied for mutation of his name in the revenue records, which was so mutated.

4] The petitioner thereafter, claiming obstruction to his possession to the land of Gat No.31 had filed RCS No.119 of 2017 and sought declaration of ownership in respect of the land of Gat No.31 and protection of his possession. An application under Order 39 Rule 1 and 2 also came to be filed therein which came to be rejected by the learned Trial Court by an order dated 06.05.2017. Misc. Civil Appeal No. 27 of 2017 challenging the same also came to be dismissed by the Judgment 24.10.2017, which concurrent finding is being challenged in the present petition.

(3)

5] Mr. Agrawal, learned counsel for the petitioner submits that since Vatsalabai was in cultivating possession of the suit land, upon her demise, the petitioner being her grandson came into possession of the property and was cultivating the same. The name of the petitioner according to him, was duly entered into the 7/12 extract which demonstrated his possession. To supplement this, affidavits of the owners of the adjacent fields were also filed. He, therefore, submits that the Court below were not correct in holding that the petitioner was not in cultivating possession of the suit field.

6] The Tenancy Court in R.T.C. No.59(14)/Adula Bazar-2/87-88, by its order dated 10.06.1988, had found that Vatsalabai was in cultivating possession of the suit field, while answering issue No.3. and had further directed that Vatsalabai had acquired a statutory right of purchase. In pursuance to this order, it is stated that the purchase price stood paid on 18.07.1988. The appeal by the original owner of the property, namely, Kamlabai Waghmare being tenancy appeal No.3/59(14)/87-88 Adula Bazar was allowed by the Sub Divisional Officer by an order dated 13.02.1989. Revision before the Maharashtra Revenue Tribunal categorically records in the order dated 01.04.1999 that the finding regarding Vatsalabai being in possession was flawed, and unreliable inasmuch as the Tahsildar had recorded the finding on the basis of a xerox copy of an alleged lease

(4)

deed. Thus, the very fact, of Vatsalabai being in possession of the land in question, has been doubted by the Maharashtra Revenue Tribunal. Though the Maharashtra Revenue Tribunal, Nagpur by the order dated 01.04.1999 remanded the matter back nothing has transpired thereafter. It was therefore necessary for the petitioner, to have placed on record documents evincing the cultivating possession of Vatsalabai since 1988-89, however, the Courts below have concurrently found that no such documents were filed. The only document, which formed the basis of the plea of the petitioner being in cultivating possession was the mutation entry in the revenue record of his name which has been disbelieved by the learned Trial Court on the ground that before making the same, the procedure under Sections 149 and 150 of the Maharashtra Land Revenue Code which requires the conduct of an enquiry before making such an entry has not been followed. Insofar as the statements of the adjacent owners relied upon by the petitioner, the Trial Court found that there are equal number of affidavits of the neighbouring owners filed by the other side too, in which case, both of them, would not be reliable. In such a situation, in absence of anything else, in my considered opinion, the learned Trial Court rightly held that the plaintiff/petitioner had failed to demonstrate his cultivating possession upon the land of Gat No.31. It is inconceivable, that there

(5)

would be no revenue record regarding the so called possession of Vatsalabai, who claimed to be in possession from 1987 onwards. The absence of such a record therefore, had rightly been found by the learned Trial Court, not inspiring confidence regarding plea raised by the petitioner of being in cultivation. The Appellate Court has also considered the absence of the documents, and also absence of the entry of crops statements in the 7/12 extracts vis-a-vis the petitioner to hold that the claim of the petitioner to be in possession was not *prima facie* demonstrated.

7] In this view of the matter, I do not find any infirmity in the order passed by the learned Trial Court, as well as the judgment of the Appellate Court.

8] The writ petition is without any merits and accordingly dismissed. No costs.

9] It is made clear that the suit shall be decided by the Trial Court on its own merits as the observations above are only on a *prima facie* basis.

(AVINASH G. GHAROTE, J)