

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

WRIT PETITION NO.287 OF 2020

**DADASAHEB NAMDEV KHANDAGALE
VERSUS
TUKARAM VITTHAL KHANDAGALE AND OTHERS**

...

Mr. Hrishikesh V. Tungar, Advocate for the Petitioner.
Mr. S. B. Pulkundwar, AGP for Respondents-State.

...

**CORAM : SANDEEP V. MARNE, J.
DATED : 06th DECEMBER, 2022.**

PER COURT:-

1. By this petition petitioner assails the judgment and order dated 03.12.2018 passed by the Ad-hoc District Judge-3, Beed dismissing Miscellaneous Civil Appeal No.19/2017 and confirming the order dated 18.02.2017 passed by the Joint Civil Judge, Senior Division, Beed partially granting interim injunction and partially declining the same.

2. By order dated 18.02.2017 the Trial Court has not granted interim injunction to restrain defendants from interfering in the possession of plaintiff over suit land. However, defendants are restrained from creating any third party rights in respect of suit property. The present petition is filed to press the prayer for balance portion of interim injunction to the extent of restraining defendants from interfering in the possession of plaintiff.

3. I have heard the learned counsel appearing for petitioner and I have perused the record.

4. It appears that both the Trial Court as well as Appellate Court has laid much emphasis on recording names of defendants to the revenue record for the purpose of arriving at a conclusion that defendants appear to be in possession of suit property. However, it was specifically pleaded by plaintiff in his suit as well as in the Appeal that the concerned mutation entry recording the names of defendants to the suit property is erroneously effected. The mutation entry proceeds on a footing that the partition took place on 01.08.2001. The basis for effecting the mutation entry is the partition deed. However, perusal of the partition deed would indicate that the stamp paper on which it is executed is purchased on 24.08.2001. Therefore, how the partition deed that could be executed only on or after 24.08.2001 could be produced before the Circle Officer on 01.08.2001 is incomprehensible. Both the Trial Court as well as Lower Appellate Court have completely ignored this aspect while passing the impugned orders. To that extent, the orders passed by both the Courts below appear to be erroneous.

5. However, at the same time petitioner/plaintiff has not produced any material on record to show his actual possession over the property either on the date when the impugned orders were passed or even today. Therefore, though some error has crept in the orders passed by the Trial Court and the Lower Appellate Court, in my view on account of passage of time and pendency of the suit since the year 2015 no purpose would be served in setting aside the orders and clamping injunction against defendants to restrain them from interfering with alleged possession of plaintiff over the suit property at this stage.

6. Accordingly, the present writ petition is disposed of with a request to the Trial Court to expedite the hearing of the suit and make an endeavour to decide the same as expeditiously as possible and preferably within a period of one year from today.

(SANDEEP V. MARNE)
JUDGE

Devendra/December-2022