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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3991 OF 2018

Swapnil s/o Suresh Deshpande,
Age – 35 years, Occ – Agriculture
R/oo Khanapur, Taluka – Ahmedpur
Through his Power of Attorney
Shri Sharad Vitthalrao Deshpande

PETITIONER

VERSUS

1. Anand s/o Dinanath @ Baburao Deshpande RESPONDENTS
Age – 72 years,
2. Sindhubai w/o Dinkarrao Deshpande,
Age – 75 years,
3. Santosh s/o Dinkarrao Deshpande,
Age – 42 years,
4. Prabhakar s/o Shridharrao Deshpande
Age – 80 years,
5. Sudhakar s/o Shridharrao Deshpande,
Age – 75 years,
6. Madhukar s/o Shridharrao Deshpande,
Age – 73 years,
7. Bhaskar s/o Shridharrao Deshpande
Age – 68 years, Occ – Agriculture
All Occ – Agriculture
R/o Khanapur, Taluka – Ahmedpur
District – Latur
8. Manisha w/o Manoharrao Kulkarni,
Age – Major, Occ – Household
R/o Kostgaon, Taluka – Renapur
District – Latur
9. Somesh s/o Rajabhau Deshpande,
Age – 33 yrs, Occ – Agriculture

10. Mahesh s/o Rajabhau Deshpande,
Age - 29 years, Occ – Agriculture
Both R/o Khanapur, Taluka- Ahmedpur
District - Latur

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Mr. V. D. Salunke, Advocate for the petitioner
Mr. P. R. Katneshwarkar, Advocate for respondent No.1

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 12th JANUARY, 2022
PRONOUNCED ON : 31st JANUARY, 2022

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of learned advocates for the parties.
2. This petition challenges order dated 15th March, 2018 passed by learned District Judge-1, Ahmedpur, in Miscellaneous Civil Appeal No.2 of 2017 thereby reversing the order dated 3rd February, 2017 passed by learned 3rd Joint Civil Judge, Junior Division, Ahmedpur below temporary injunction application (Exhibit-5) in Regular Civil Suit No. 733 of 2016.
3. The petitioner is the plaintiff and the respondents are the defendants in RCS No. 733 of 2016, which is filed for declaration of ownership and permanent injunction in respect of the property mentioned in the plaint. Along with the suit, application Exhibit-5 was filed by the petitioner-plaintiff seeking temporary injunction,

restraining the defendants from interfering and disturbing the peaceful possession of the plaintiff over the suit property.

4. The defendants resisted the suit and the temporary injunction application (Exhibit-5), by filing written statement / say. The defendants contended that the suit land was *Inam* land and their predecessor Bapurao was in possession of the suit land prior to 1955 till his death on 13th July, 1977 as the protected tenant and thereafter, the defendants are in possession of the suit property. The defendants relied on a chart dated 9th July, 1960 which shows as to how the lands, after abolition of *Inam*, were disposed of.

5. The trial court, on 3rd February, 2017, by a reasoned order, allowed the application Exhibit-5 and granted temporary injunction in favour of the plaintiff. Being aggrieved by the said order, the defendants filed MCA No. 2 of 2017, which is allowed by the Appellate Court. The appellate Court's is impugned in the present writ petition.

6. Heard learned advocate for the petitioner and learned advocate for the respondents.

7. On going through the record, it is clear that while allowing the application Exhibit-5, the Trial Court has considered that the

plaintiff in support of his possession, has filed on record seven twelve extracts of the year 1969-70 to 2001-02, affidavits of sixteen adjoining agriculturists supporting his possession over the suit land and the receipts of payment of land revenue. By relying on the decision of the Hon'ble Apex Court in "**Ramegauda V/s M. Varadappa Naidu**" AIR 2004 SC 4609, the Trial Court allowed application Exhibit-5 filed by the petitioner – plaintiff holding that the legal ownership of the suit property shall be decided at the time of final decision of the suit, however, the plaintiff has *prima facie* proved possession over the suit property and the documents filed on record by the plaintiff indicate that the plaintiff is in possession of the suit land.

8. The Trial Court held that from the receipts of payment of land revenue and from the certificate of the Talathi, it is not proved that the defendants are in possession of the suit land and except affidavits, there is no other document on record which shows that the defendants are in possession of the suit land.

9. The appellate court, by going into the merits of the pleadings of both the parties, has recorded a finding that "*There is no document on record to gather the status of the plaintiff, which is recognized by competent revenue authority. while considering prima facie case of a person, the court has to*

consider prima facie status of such person whether the said person prima facie is having right towards the property in dispute.” By referring to the provisions of the Hyderabad Abolition of Inam and Cash Grants Act, 1954 (for short “the Act of 1954”) as well as the provisions of section 38 (6) of the Hyderabad Tenancy & Agricultural Lands Act, 1950, the appellate court held that section 6 (3) of the Act of 1954 does not allow transfer or partition from the restricted owner, without previous sanction of the Collector. The Appellate Court further referred to the affidavits of sixteen persons filed in favour of the plaintiff, observing that evidence of affidavit, without cross examination has to be considered with caution. The Appellate Court, therefore, allowed the appeal and set aside the order passed by the Trial Court.

10. It is obvious from the impugned order passed by the Appellate Court that the Appellate Court has erred in considering the merits of the matter, thereby practically coming to a conclusion that the defendants are owners of the suit property, which is not expected while deciding the challenge raised to a temporary injunction order. The Appellate Court has failed to consider the documents in the form of affidavits of sixteen adjoining agriculturists, so also, the revenue entries in the form

of seven twelve extracts for the years together placed on record by the plaintiff, in the proper perspective. Those are wrongly discarded by the Appellate Court while passing the impugned order. The reasons assigned by the Appellate Court are not acceptable and the Appellate Court has committed an error in interfering with the well reasoned order passed by the Trial Court.

11. The Appellate Court has failed to take into consideration that *prima facie* case is in favour of the plaintiff. The record indicates that the plaintiff is in possession of the suit property. The balance of convenience lies in favour of the plaintiff and irreparable loss would be caused to the plaintiff, if the injunction is refused to him. Considering these aspects and giving cogent reasoning, the Trial Court allowed the temporary injunction application filed by the plaintiff. These aspects are not properly dealt with by the Appellate Court and the Appellate Court has committed an error in going into the merits of the rival pleadings and recording a finding that there is no transfer of land after getting permission of the competent authority. These aspect can be gone into during the trial and could not have been dealt with by the Appellate Court while deciding Miscellaneous Civil Appeal challenging temporary injunction order. The Trial Court has

passed a well reasoned order, which was not required to be interfered with by the Appellate Court.

12. It is a matter of record that the Trial Court granted temporary injunction in favour of the plaintiff by order dated 3rd February, 2017, which was continued during the pendency of the appeal. This Court, vide order dated 5th September, 2018, stayed the impugned judgment of the Appellate Court and directed that the order dated 18th April, 2017 passed by the Appellate Court, directing the parties to maintain *status quo* in respect of the suit land, as on the date of the filing of the suit, shall be maintained. The suit is of the year 2016 and, therefore, the suit can be directed to be decided within a stipulated time.

13. Hence the following order.

ORDER

- a. Writ petition is allowed.
- b. The impugned judgment and order dated 15th March, 2018 passed by the District Judge – 1, Ahmedpur in Miscellaneous Civil Appeal No. 2 of 2017 is hereby quashed and set aside.
- c. The parties shall maintain *status quo* as directed by this Court vide order dated 5th September, 2018, till

final decision of the suit.

- d. The Third Joint Civil Judge, Junior Division, Ahmedpur is directed to decide Regular Civil Suit No. 733 of 2016 within a period of six months from the date of receipt of writ of this order.
- e. Parties to co-operate in early disposal of the suit.
- f. Rule is made absolute in aforesaid terms with no order as to costs.

[NITIN B. SURYAWANSHI]
JUDGE