

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6270 OF 2021

Baban Murlidhar Kadam

PETITIONER

VERSUS

Tatyasaheb Shivaji Kamble and Others

RESPONDENTS

.....

Mr. Nitin S. Ingle, Advocate for the petitioner

Mr. K. R. Doke, Advocate for the respondents

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 15th JUNE, 2022

ORDER :

1. The petitioner is aggrieved by the order passed by learned Adhoc District Judge – 1, Bhoom in Miscellaneous Civil Appeal No. 7 of 2021, thereby allowing the appeal filed by the respondents and setting aside the order of the Trial Court, granting injunction in favour of the petitioner.
2. The petitioner filed Regular Civil Suit No. 489 of 2020 for declaration of ownership and perpetual injunction against the respondents / defendants, in respect of land Gut No.2, admeasuring 74 *Are*. Along with the suit, application Exhibit-5 seeking temporary injunction was also filed.

3. The respondents / defendants appeared and resisted the claim of the plaintiff / petitioner contending that the plaintiff is not in possession of the suit land. He is resident of village Wadgaon, Taluka – Mawal, District – Pune. They denied that the plaintiff has erected cattle shed and tin shed in the suit property. According to them, they have erected tin sheds and are running grocery shop and hotel business at the said place, which is an encroachment over the government land and not on the suit property. They are in possession of the said property since 8th April, 1997 and nobody has obstructed their possession over the same. They have become owners of the suit property by adverse possession from 9th April, 2009. They have also taken authorized electricity connection for the house and hotel.

4. The Trial Court, on the basis of the sale deed, seven twelve extract and Form 8A has held that the plaintiff is the owner and possessor of the suit property and the defendants have failed to produce any cogent and reliable evidence to prove their possession over the land Gut No.2. The Trial Court has held that the documents in the form of electricity bills, photographs etc. produced by the defendants, in order to establish their possession over the suit land, are scanty to prove their possession over the suit land. The Trial Court, therefore, granted

temporary injunction in favour of the petitioner / plaintiff by allowing application Exhibit-5.

5. Being aggrieved by the same, the respondents / defendants challenged the said order by filing Miscellaneous Civil Appeal No. 7 of 2021 before the District Court. The Appellate Court has set aside the order passed by the Trial Court, hence the present writ petition.

6. Heard learned advocate for the petitioner and learned advocate for the respondents. Perused the documents placed on record.

7. The Appellate Court, while setting aside the order passed by the Trial Court, has held that the plaintiff has not mentioned measurement of the tin sheds erected by him. Though the plaintiff has ownership of land Gut No.2, but, there is no evidence to show that the tin sheds, as pleaded by the plaintiff in the plaint, are in Gut No.2. The Appellate Court did not accept the affidavit filed by the petitioner of one Babasaheb Solankar, on the ground that he appears to be interested person. The Appellate Court, therefore, held that there is no satisfactory evidence on record to establish that there are tin sheds in Gut No.2.

8. While allowing the appeal filed by the defendants / respondents, the Appellate Court has taken into consideration the documents placed on record by them in the form of photographs as well as electricity receipts.

9. In this writ petition, the defendants / respondents have placed on record, copy of *Panchanama* dated 13th September, 2019 conducted by Sub Divisional Engineer (Construction), Zilla Parishad, Sub Division, Bhoom, wherein it is mentioned that the tin sheds erected by the defendants / respondents, are by way of encroachment on the government land and when they were asked to remove the encroachment, they agreed to do so, after the other encroachments are removed. The photographs placed on record also *prima facie* indicate that the defendants have erected tin sheds, where they are residing and running the business of grocery shop and hotel. One of such tin shed is erected for cattle. All these tin sheds appear to be abutting to Bavi – Chumbali road. The defendants have also placed on record copy of the application filed by the plaintiff seeking appointment of Court Commissioner to carry out measurement and to bring on record factual position of the tin sheds erected by the defendants and to ascertain the exact location of both the tin sheds.

10. In view of aforesaid facts, it is clear that the plaintiff himself is not in a position to justify his claim of temporary injunction against the defendants as he has failed to *prima facie* prove that the tin sheds erected by the defendants, are in land Gut No.2. The balance of convenience, therefore, does not lie with the plaintiff and it cannot be certainly said that irreparable loss would be caused to him, if temporary injunction is not granted in his favour. As such, no fault can be found with the order impugned in the present writ petition. There is no illegality or perversity in the impugned order. Writ petition, being devoid of any merit is dismissed. No costs.

[NITIN B. SURYAWANSHI]
JUDGE