

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

WRIT PETITION NO.7320 OF 2019

YUVRAJ SUBHASH PATIL
VERSUS
SURESH DAMU PATIL AND ANOTHER

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Advocate for the Petitioner : Shri Salunke V.D.
Advocate for Respondent 1 : Shri Dheple Shantaram R.

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CORAM: SMT. BHARATI H. DANGRE, J.

DATE :- 31st January, 2022

Per Court:

1. Heard the learned counsel for the petitioner and the respondent.
2. The petitioner is aggrieved by the order passed by the Adhoc District Judge, Bhusawal on 22.01.2019 in Misc. Civil Appeal No.17/2016, thereby, reversing the findings rendered by the Trial Court granting injunction in favour of the petitioner/ plaintiff below Exhibit-6.
3. Upon perusal of the proceedings, it can be seen that the petitioner is the plaintiff, who has filed RCS No.21/2014 for specific performance of the contract, by pleading that the plaintiff had agreed to purchase the property out of Gat No.188/1 admeasuring 2 H 59 R northern portion, from defendant No.1 and the agreement to sale to that effect was registered on 18.04.2012. The plaintiff pleaded that he paid the

earnest money of Rs.95,000/- to defendant No.1, but since the land was irrigated one, the permission from the District Rehabilitation Officer was required to be obtained.

The plaintiff pleaded that since June, 2012, he was in possession of the suit land and continue to cultivate the suit land, but since necessary formalities could not be completed, the sale deed was not registered. Since the defendants started creating obstruction to the possession of the plaintiff, he sought an injunction vide application exhibit-6 in the suit, which he has instituted seeking specific performance of the agreement.

4. The Trial Court, by specifically recording the contention of the parties and by referring to the documents in the form of 7/12 extracts of the year 2013-2014, registered agreement to sale dated 18.06.2012, application for permission being made to the District Rehabilitation Officer and affidavits of the neighbours to the effect that the plaintiff was cultivating the land along with the bills of seedlings, tractor tilling, etc., recorded that prima facie case is in favour of the plaintiff. The Trial Court recorded that on the basis of the agreement that was executed by defendant No.1, he submitted the proposal for permission to sale the suit property, which was rejected by the competent authority due to deliberate inaction on the part of defendant No.1 himself. As far as delivery of possession is concerned, the bills of purchase of seedlings and tractor

tilling as well as the affidavits of the tractor tiller and other adjacent field owners, were taken to be sufficient to establish prima facie case in favour of the plaintiff. The crucial date as to which of the party is in possession of the suit property was construed to be 18.01.2014 and after referring to 7/12 extract of the year 2014-2015 wherein, entry was recorded of cotton crop belonging to the petitioner and his name is reflected in the cultivation column, the Trial Court recorded that it prima facie establishes the possession of the plaintiff. Recording balance of convenience and irreparable loss in favour of the plaintiff, the injunction came to be granted on 11.02.2016.

5. On an appeal being filed, the findings of the Trial Court have been reversed by the learned Adhoc District Judge by making a reference to the agreement dated 18.04.2012 and by recording that there is no reference of handing over of possession in the said agreement, rather the agreement records that the possession would be handed over at the time of execution of the sale deed. The other evidence in the form of 7/12 extracts and the affidavits of the adjacent land owners and tractor tiller, etc., was found to be contrary to the documentary evidence and therefore, was not relied upon to uphold the possession of the plaintiff over the suit land. By recording that the plaintiff could not bring on record any material to show how he came in possession, the appeal came to be allowed by the impugned order dated 22.01.2019.

6. Pertinent to note that on 10.07.2019, this Court prima facie appreciated the impugned order and recorded that the first Appellate Court has overturned the findings of the Trial Court on the ground that it is not mentioned in the agreement that the plaintiff will be put in possession. Recording that on this solitary ground, the Appellate Court has discarded the revenue records and affidavits of the adjacent land owners and has concluded that this voluminous record and mutation entries, which have presumptive value, are not to be disbelieved, this Court observed that the Appellate Court has exceeded its jurisdiction in passing the impugned order.

7. I completely concur with the prima facie view expressed by this Court on 10.07.2019. The Appellate Court merely on the basis of absence of recitals as regards delivery of possession, has reversed the findings of the Trial Court by recording that other documentary evidence is contradictory to the recitals in the agreement in question. The course adopted by the Appellate Court cannot be said to be permissible one as the recital in the agreement is not the solitary reason, which required to be considered, but the surrounding circumstances that the plaintiff has brought on record showing his possession, ought to have been taken into consideration while deciding the possession of the plaintiff and prima facie case in his favour. In the aforesaid circumstances, the impugned order passed by the Appellate Court cannot be sustained and in any case,

this Court has stayed it's effect and operation from 10.07.2019.

8. In the wake of the aforesaid, recording that the findings rendered by the Appellate Court are perverse findings, which cannot be sustained, the impugned order dated 22.01.2019 is quashed and set aside and the Writ Petition is allowed.

However, it is to be noted that since the suit is filed in the year 2014 and is pending since then, the Trial Court is requested to culminate the proceedings in RCS No.21/2014 within a period of six months from today.

kps

(SMT. BHARATI H. DANGRE, J.)