

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8774 OF 2017

BHATU ANANDA BEHERE AND OTHERS
VERSUS
KASUBAI AADHAR PATIL AND OTHERS

Mr.V.D.Sapkal, Advocate for the petitioners.

Mr.Bhargav Kulkarni h/f Mr.K.C.Sant, Advocate for respondent Nos. 1 to 3 and 5, 6.

(CORAM : BHARATI H. DANGRE, J.)

DATE : FEBRUARY 2, 2022

PER COURT :

1. Heard the learned counsel for the petitioner Mr.Bhargav Kulkarni on behalf of learned counsel Mr.Sant for the caveator i.e. respondent Nos. 1 to 3, 5 and 6. The petitioners are the original plaintiffs, who filed RCS No.265/2016 before the 4th Jt.Civil Judge, J.D. Dhule seeking a relief of declaration and injunction against the respondents who are their close relatives. The plaintiffs claimed to be the owners and in possession of land admeasuring 1 hectre 14R from Gat No.736 located at village Boris, Tal.Dhule. It is pleaded by the plaintiffs that the suit property was given to them in partition and since last 35 years, they are in possession of the suit property. The claims set out in the plaint is to

the effect that another family property that is Gat No.737 admeasuring 3 hectre 22R, was also given to the family members and they are enjoying the said property. A declaration is sought against the defendants from interfering with the peaceful possession of the said property, they being the owners of the said property.

2. In the said suit, the plaintiffs filed Exh.5 seeking an injunction, to direct the defendants not to interfere in the peaceful possession of the plaintiffs, which was opposed by the defendants by filing of written statement, wherein they traverse the pleadings of the plaintiffs. It is pertinent to note that before deciding the application Exh.5, measurement of the land was carried out by the Land Records Office at the instance of the plaintiffs. The First Court, while deciding Exh.5, exhaustively referred to the pleadings and the rival contentions of the parties and in paragraph No.15, it has specifically recorded that the plaintiff has failed to establish his possession over the suit property, since he was not clear about the boundaries of Gat No.736/2B and since the possession which was claimed for last 35 years over the suit property, was not established by adducing positive evidence, it is recorded that there is no prima facie case in favour of the plaintiffs.

The Appellate Court, considered the contention of the defendants to the effect that the measurement map relied by the plaintiffs is not matching with the village map, as in the measurement map of Gat Nos. 736 and 737 appears to be very close to each other, however, by pointing out a village map, it has surfaced that Gat No.711 is situated in between these 2 gat numbers and the learned Appellate Court was also impressed by the argument advanced on behalf of the defendants that if the plaintiffs are claiming to be the possessors of the suit property since last 35 years, then they have failed to pay the agricultural cess for all these years and in the wake of this important aspect of the matter, since the plaintiffs had failed to prove their possession over the suit property , the order passed by the Joint Civil Judge, J.D.Dhule, was found to be legal and by upholding the same, the appeal filed by the appellant came to be dismissed.

3. On perusal of the concurrent findings rendered in the 2 orders, which are assailed before this Court, the ingredient of granting injunction being a prima facie case and as balance of convenience has not been established by the plaintiffs particularly when the learned Judge has observed that there is not a single revenue entry recorded in

favour of the plaintiffs, in support of their claim that for last 35 years, they are in possession. The Court has therefore posed a question as to why the plaintiffs did not take any steps to correct or modify their revenue record and even failed to pay any cess / tax of the agricultural land which they are in possession of. On the contrary, the defendants were able to make out the case and therefore the factor of irreparable loss being caused to the defendants was a factor which prompted the Court to reject the application filed at Exh.5. I do not see any legal infirmity in the 2 orders passed below, which deserve to be upheld and the writ petition deserves to be dismissed. It is, however, seen from the record that RCS No.265/2016 is pending since long before the Court of learned Civil Judge, Jr.Division, Dhule . The learned Judge is, therefore, requested to expedite the proceedings in the said suit within a period of one year from today. Needless to state that the observations made are limited for the purpose of the writ petition and the learned Judge, while determining the rights and contentions of the parties in the suit, shall not be influenced by the above observations.

(BHARATI H. DANGRE, J.)