

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7824 OF 2022

PRAKASH RAYSINGH KUDALE AND ANOTHER

VERSUS

SURESH ALIAS RAYSING KUDALE
RAJPUT AND OTHERS

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Advocate for Petitioners : Mr. Ameet R. Vaidya
Advocate for Respondents No. 1 to 4 : Ms. Neha B. Kamble

CORAM : SANDEEP V. MARNE, J.
DATE : 14th DECEMBER, 2022

PER COURT :

1. By this writ petition, petitioners challenge the Judgment and order dated 8th December, 2021 passed by the Jt. Advoc District Judge-4 , Aurangabad, thereby confirming the order dated 11th August, 2021 passed by the trial court rejecting petitioners/plaintiffs application for temporary injunction.

2. The suit is filed by petitioners/plaintiffs for injunction. The suit is based on gift deed executed by the mother of defendant No. 1 allegedly in favour of the petitioners/plaintiffs. On the other hand, the case of the defendant No.1 is that the mother had executed partition of the property under which land admeasuring 80R each was given in the share of plaintiff No.1 and defendant No.1. The defendant No.1 claims that plaintiff No.1 has already alienated 1/5th portion of land admeasuring 80 R which came to his share under the partition deed whereas the defendant No.1

continues to own and possess his own share of land admeasuring 80R. Even after the partition deed, it appears that the mother still continued to own and possess some additional land. It is a case of the defendant No.1 that mother has already alienated her entire land to different purchasers and was not left with any land to be gifted to the plaintiffs/petitioners.

3. There appears substantial confusion about the exact boundaries of the lands which are allegedly gifted by the mother in favour of the plaintiffs as well as boundaries of the land which is retained by the defendant No.1 after allotment of share to him by virtue of the partition deed. It is the case of defendant No.1 that the plaintiffs have specified the boundaries of the land covered by the gift deed in such a manner that the land which is in ownership and possession of the defendant No.1 is sought to be gifted in their favour by way of the gift deed.

4. Under the above confusing situation, both the trial court as well as the District court have refused to grant temporary injunction in favour of the plaintiffs. Another factor which has weighed the mind of the District Judge to reject interim injunction in favour of the plaintiff is sanctioned of lay out plan by the Aurangabad Municipal Corporation in respect of the land in ownership and possession of the defendant No.1.

5. Mr Vaidya, learned counsel appearing for petitioners would contend that the plaintiffs/petitioners have absolutely no concern with the 80R land in ownership and possession of defendant No.1. He would submit that the two lands namely, the one gifted in favour of the plaintiff and the one coming to the share of defendant No.1 by way of partition are

two distinct and different lands. He would rely upon the mutation entry in respect of the lands to buttress his submission.

6. On the other hand, Ms Kamble, learned counsel appearing for respondent No.1 would submit that the plaintiffs are taking disadvantage of the boundaries of the land specified in the gift deed for the purpose of claiming possession in respect of the lands owned and possessed by defendant No.1.

7. From the above discussion, it is apparent that there is a confusion with regard to the exact boundaries and location of the land in respect of which the rights are claimed by the plaintiffs and defendant No. 1. In such circumstances, it was not a fit case for grant temporary injunction in favour of the plaintiffs who have not demonstrated before the trial court as yet about existence of two lands without causing any interference by one over the other. No doubt, it is the assertion of the plaintiffs that the lands covered by the gift deed and one which has come to the share of defendant No.1 by partition deed are different and distinct plans. This factum will have to be proved by leading evidence and possibly by carrying out measurement of lands and fixation of boundaries. However, as of now, it cannot be said that *prima facie* case was made out by the plaintiffs for grant temporary injunction.

8. In my view, therefore, the trial as well as the lower appellate court have not committed any error in rejecting the plaintiffs' prayer for grant of interim injunction.

9. The writ petition is devoid of merits and the same is dismissed without any orders as to costs.

[SANDEEP V. MARNE, J.]

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