

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

36 WRIT PETITION NO.10243 OF 2022

MUKUND MADANMOHAN MANDHANE
VERSUS
MANMOHAN MURLIDHAR MANDHANE AND ORS.

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Advocate for Petitioner : Mr Vilas P. Savant
Advocate for Respondent No. 2 : Mr P.K. Lakhotiya
Advocate for Respondent Nos. 4, 5, 7 and 9 : Mr S.V. Bhopi

CORAM : SANDEEP V. MARNE, J.
DATE : 28th NOVEMBER, 2022

PER COURT :

1. The writ petition is filed challenging the Judgment and order dated 16.09.2022 passed by the District Judge-2, Majalgaon dismissing petitioner's Misc. Civil Appeal and confirming the order dated 28.06.2022 passed by the trial court granting temporary injunction in favour of defendant No. 2 in his counter claim.

2. By order dated 28.06.2022, the trial court has enjoined the plaintiff from interfering in the possession of the defendant No. 2 in respect of the land in question. Admittedly, the land is acquired by defendant No. 2 on the strength of relinquishment deed dated 13th January, 2020. The plaintiff has admittedly not challenged the said relinquishment deed. Furthermore, the name of defendant No. 2 is mutated to the record of rights of the land in question in the year 2013 itself. Therefore, there is no question of the plaintiff being in possession of that land. The trial court

has rightly enjoined the plaintiff from disturbing possession of defendant No. 2, who has filed counter claim. The lower appellate court has rightly rejected the appeal filed by the plaintiff/petitioner.

3. Learned counsel for petitioner relies on the Judgment of this Court in ***Laxminarayan Parmeshwarlal Jaiswal Vs. Pravin s/o Prithivraj Jaiswal reported in (2018) 1 Mh.LJ. 656*** in support of his contention that no injunction can be granted to one co-sharer against other. In the present case, whether the land in question is ancestral property or not is itself in dispute. It is not an admitted position that the plaintiff and defendant No. 2 are co-sharers. On the other hand, defendant No. 2 is relying upon the relinquishment deed in support of proof of ownership and possession. As against this, plaintiff has not been able to produce any document to show that he is owner or the possessor of the the suit property. Therefore, it cannot be stated that the plaintiff and defendant No. 2 are co-sharers in respect of that land. The Judgment has therefore, no application to the facts of the case.

4. The Writ Petition is devoid of merits and the same is dismissed without any order as to costs. Interim relief granted earlier, stands vacated.

[SANDEEP V. MARNE, J.]

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