

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3737 OF 2022

RAVINDRA RAMCHANDRA DESHPANDE AND OTHERS
VERSUS
NANASAHEB BABA BURUNGE

...
Advocate for Petitioners : Mr. S.G. Chapalgaonkar
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 25th MARCH, 2022

ORDER :

1. The petitioners/original defendant is aggrieved by the order passed below Exhibit-5 thereby granting temporary injunction to the respondent/original plaintiff, which is confirmed by the appellate Court.

2. Heard learned advocate for the petitioner. He strenuously assailed the impugned orders passed in favour of the plaintiff by the trial Court and confirmed by the appellate Court.

3. It emerges from the record and the impugned orders revealed that the trial Court has observed that the plaintiff has

purchased the disputed land on 16.05.2016 and his name is entered in the revenue record on the basis of sale deed. The trial Court therefore, on the basis of mutation entry no. 4825 and 7/12 extract, so also by taking into consideration the First Information Report and the statement of plaintiff, came to the conclusion that prima facie the suit property appears to be in possession of the plaintiff. It was, therefore, held that the balance of convenience is in favour of plaintiff and if possession of the plaintiff is not protected the plaintiff will suffer irreparable loss.

4. The appellate Court concurred with the findings recorded by the trial Court. It is observed by the appellate Court that 7/12 extract on record shows name of father of defendants was mutated to possession column till 2011. Thereafter, the said name was not appearing. The sale deed of defendants shows that they purchased the property in same survey number. It is mentioned in the sale deed that the possession was already given and said possession is confirmed. The appellate Court therefore, held that if the defendants were protected tenants then in the sale deed it would have been mentioned that the possession of the purchaser is as tenant and by the sale deed said

possession is confirmed as possession of owner. But such recitals are not appearing in the sale deed. The defendants have paid huge amount of Rs. 24,00,000/- at the time of purchase. If the defendants have tenancy right then they need not have paid such big amount. The report of the Tahsildar is also considered to the effect that the defendants and their father were not protected tenant. The contention of the defendants that the award is passed in 1974 in their favour is noted by the appellate Court, however, in view of the recent sale deed executed by the defendants, the appellate Court was of the view that the award as per Land Acquisition Act is not helpful to the case of defendants. Taking into consideration the 7/12 extract and the sale deed on record, the appellate Court has held that the plaintiff has prima facie proved possession as purchaser and the report of Tahsildar dated 19.07.2018 and document regarding surrender of tenancy executed by the Raghunath Teke and sale deed by the defendants by which defendants purchased the land in same survey number goes against the defendants. The appellate Court, therefore, confirmed the order of temporary injunction granted by the trial Court.

5. Both the courts below have passed well reasoned order on the basis of documents placed on record. No illegality or perversity is found in the impugned orders, concurrent findings of facts are not liable to be interfered with in extraordinary writ jurisdiction. The writ is therefore, dismissed.

[NITIN B. SURYAWANSHI]
JUDGE