

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION 6895 OF 2022

Bhanudas Pitambar Misal	...	Petitioner
<i>Versus</i>		
Vishnu Maruti Misal and Ors.	...	Respondents

Mr. M. A. Patil i/by Mr. Jaydeep A. Shringare for the Petitioner.
None for the Respondents.

CORAM: ROHIT B. DEO, J.
DATE : 14th JUNE, 2022

P.C. :-

1. The petitioner is the original plaintiff who has brought Regular Civil Suit 522 of 2016 seeking specific performance of a purported oral agreement of sale *qua* the subject matter of the suit.

2. Perusal of the plaint reveals that according to the plaintiff the suit property is the ancestral property of Maruti Misal and defendant. Maruti Misal having expired on 9th July, 2011, the defendant has become the sole owner of the suit property. The plaintiff claims that it was deceased Maruti Misal who entered into an oral agreement with him in the year 1982 and delivered possession of the suit property to the plaintiff. The plaintiff claims to be in cultivating possession of the suit property since 1982. The plaintiff then claims that after the demise of Maruti Misal, the defendant avoided to execute the sale deed and demanded additional consideration of Rs.1,00,000/- (Rupees One Lakh

Only). It is on the basis of such averments that the suit is brought.

3. The plaintiff preferred an application under Order XXXIX Rules 1 and 2 seeking injunctive reliefs *qua* his purported possession. The learned Trial Judge was pleased to allow the application vide order dated 19th July, 2017. The learned Trial Court observed that while the name of the defendant is shown as the owner and cultivator, since 2008 the 7/12 extract includes the name of the plaintiff as the cultivator. The learned Trial Judge noted the submission of the learned counsel for the defendant that reference is to contract for cultivation. The learned Trial Court held the plaintiff in possession and granted the injunction prayed.

4. The defendant preferred Misc. Civil Appeal 41 of 2017 which is allowed vide judgment dated 13th January, 2012.

5. The learned Appellate Court referred to the enquiry held by the Circle Officer Mr. Nazare who submitted a report to the Tahasildar pursuant to the application preferred by the plaintiff for recording his name in the cultivation column of the 7/12 extract. The report submitted by the Circle Officer shows that the plaintiff did not produce any documentary evidence to show his cultivating possession. The Appellate Court then noted that the only 7/12 extract in which the name of the plaintiff is shown in cultivating possession pertains to the years 2008-2009 to 2015 and the reference is as Khandakari (contract basis).

6. The Appellate Court then noted the mutation entry in the year

1971, suggesting that there was a partition between Maruti Misal and defendant 1 and that the suit property was in possession of defendant 1 since 1971. In my considered view, the said mutation entry renders the entire case of the plaintiff vulnerable. Notably, accordingly to the plaintiff, it was Maruti Misal who entered into an agreement of sale in the year 1982. However, if the suit property was already partitioned in the year 1971 and fell to the share of the defendant, there was no question of deceased Maruti Misal entering into an oral agreement with the plaintiff.

7. The learned Appellate Court has referred to the voluminous material to suggest that the case of the plaintiff is extremely fragile illustratively, it is noted that even the entries on the basis of the contract are taken in the revenue record without issuing notice to the defendant.

8. In exercise of writ jurisdiction, I am not inclined to re-appreciate the material on record as if acted as second Appellate Court. Nothing is demonstrated as would suggest a grave error either in approach or in appreciating the material on record. The learned Appellate Court has considered the material on record and the finding that the plaintiff is not in possession, is consistent with the material on record.

9. In this view of the matter, I see no reason to interfere with the order impugned.

10. Certain decisions are pressed in service by the learned counsel

for the petitioner to buttress the submission that the moment possession is proved, injunction should logically follow. As a proposition, the submission is unexceptional. However, I need not delve deeper in the decisions cited, since I agree with the finding recorded by the Appellate Court that the plaintiff does not appear to be in possession of the suit property.

11. The petition is dismissed.

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[ROHIT B. DEO, J.]