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

WRIT PETITION 5876 OF 2018

Tejas Dhanyakumar Patil ... Petitioner
Versus
Shri Arun Bapuso Patil and Ors. ... Respondents

Mr. S. S. Koregave for the Petitioner.
Mr. C. G. Patil for the Respondent 1.

CORAM: ROHIT B. DEO, J.
DATE : 19th JULY, 2022

P.C. :-

1. Regular Civil Suit 92 of 2016 is brought by the respondent 1-plaintiff for declaration and perpetual injunction on the premise that he is in possession of the suit field and has become owner by adverse possession.

2. The plaintiff sought temporary injunction under Order XXXIX, Rules 1 and 2 seeking to restrain the defendants from disturbing his possession. By reasoned order dated 3rd August, 2016, the learned Trial Judge was pleased to reject the application under Order XXXIX, Rules 1 and 2.

3. The learned Trial Judge noted that the plaintiff is asserting ownership on the basis of adverse possession and in the same breath is claiming to be tenant, which pleas are mutually destructive. The learned Trial Judge then considers the material on record pressed in service by the plaintiff to demonstrate settled possession. One material

is the receipts which according to the plaintiff show sale of sugarcane crops to sugar factories. According to the plaintiff, the receipts record the Gut number of the suit property. The learned Trial Judge observes that since the plaintiff and the defendants both own and possess land in addition to the suit property, it is difficult to come to any conclusion *qua* possession only on the basis of the receipts inasmuch as it is highly unlikely that the sugar factory staff would have come on the spot to verify the information disclosed by the plaintiff. The Panchnama on which reliance is placed by the plaintiff, which is conducted by the revenue officer, is found suspicious. I am consciously refraining from making any positive observation lest there is any prejudice to the parties, particularly in the context of the order which I propose to make.

4. The plaintiff is further relying on 7/12 extracts which according to him show that he is in cultivating possession. The learned Trial Judge has given its own reasons for not accepting the claim of possession on the basis of the revenue record.

5. The learned Appellate Court was expected to reconsider the material on record and to arrive at independent findings. Although, a possible view may not be vulnerable to an inevitable interference in appeal, the said principle does not dilute the responsibility of the Appellate Court to reconsider the material on record. Unfortunately, this has not been done and the laconic order leaves a lot to be desired.

6. In this view of the matter, I am inclined to set aside the judgment impugned and to remit the matter to the learned Appellate Judge for fresh consideration in accordance with the law.

7. Order impugned is set aside.
8. Miscellaneous Civil Appeal 196 of 2016 is remitted to the learned Appellate Court for fresh decision in accordance with law, which may be rendered within the next three months.
9. Till the disposal of the appeal and for a period of two weeks thereafter, the status-quo granted on 31st August, 2016 in Miscellaneous Civil Appeal 196 of 2016, shall continue to operate.

[ROHIT B. DEO, J.]