

PMB

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

WRIT PETITION NO.7122 OF 2021

Pralhad Dnyandev Sherkar and anr. .. Petitioners
vs.

Sagar Bhimrao Sabale .. Respondent

Mr. Vaibhav R. Gaikwad for petitioners.

Mr. Dhananjay D. Rananaware for respondent.

CORAM : M. S. KARNIK, J.

DATE : JANUARY 3, 2022

P.C.:-

1. Heard learned counsel for the petitioners at some length.

2. The petitioners are the original defendants. The respondent-original plaintiff filed a suit for perpetual injunction. It is the case of the plaintiff that out of Gat No.225, he is the owner and in possession of 2 Ana 8 Pai from out of Gat No.225. There is no dispute about the defendants' possession over 10 Ana 8 Pai share. It is the case of the petitioners-defendants that entire Gat No.225 was sold by the plaintiff to them and since then the defendants are in possession of even the 2 Ana 8 Pai share the plaintiff claims. As stated earlier there is no dispute

about the defendants' possession over 10 Ana 8 Pai which earlier belonged to the plaintiff. The defendants' case is that they came in possession of remaining portion of 2 Ane 8 Pai by virtue of an oral agreement to sell.

3. It is contended by learned counsel for the petitioners-original defendants that a suit for specific performance being Regular Civil Suit No.87 of 2012 is filed on the basis of an oral agreement. He submits that with a view to defeat the relief claimed in the suit, the plaintiff executed a Gift Deed in favour of his son. He pointed out that on the basis of Mutation entry recording the name of the plaintiff based on the gift deed the plaintiff claim to be in possession. The parties produced various documents on record to establish their possession. The trial Court for the reasons mentioned in its order granted injunction in favour of the plaintiff during the pendency of this suit. The Appellate Court dismissed the Miscellaneous Civil Appeal filed challenging the order of the trial Court.

4. It is the contention of learned counsel for the petitioners that by virtue of an oral agreement they are in possession of the suit property. My attention is invited to the various documents on record by learned counsel for the petitioners to contend that it is the petitioners-defendants who have planted sugarcane crops in the suit lands. This to establish the petitioners possession. My attention is also invited to a complaint dated 22.10.2010 filed by the

respondent to the police which according to the learned counsel for the petitioners demonstrate the petitioners' possession over the subject land.

5. I have gone through the findings recorded by the Courts below. The trial Court has in detail considered the materials on record while allowing the application made by the respondent-original plaintiff for injunction during the pendency of the suit. The petitioners-original defendants are claiming possession over the subject land on the basis of an oral agreement. Much reliance is placed by learned counsel for the petitioners on the complaint made by the father of the plaintiff to the police. The Appellate Court has recorded that the statement given by the father of the plaintiff before the police is contrary to the complaint that was made. The Appellate Court further recorded that it was not necessary to record the statement of the complainant as the nature of the case was non-cognizable. If on this basis, the Appellate Court has not placed reliance on the statement, I see no reason to interfere with the said finding. The Courts below apart from appreciating the materials and the documents on record relied upon an affidavit filed by an adjacent owner from the same Gat No.225 which was in favour of the plaintiff. The petitioners are claiming possession on the basis of an oral agreement whereas respondent-plaintiff is claiming possession on the basis of a registered Gift Deed. I see no perversity with the concurrent finding recorded by the Courts below.

6. In this view of the matter, I see no reason to interfere with the impugned order.
7. The Writ Petition is dismissed.

(M.S. KARNIK, J.)