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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 5127 OF 2022

RANJAN BHAUSAHEB DOMBE

....PETITIONER

V/s.

MAHESH DEVIDAS SATHE AND ORS

.....RESPONDENTS

Mr. Machhindra A. Patil Advocate for the Petitioner

Mr. G. N. Salunkhe i/b Umesh Kurund for Respondent no. 1

Mr. C. D. Mali AGP for Respondent nos. 2 to 10

CORAM : NITIN W. SAMBRE, J.

DATE: APRIL 29, 2022.

P.C.:

1) Respondent no. 1 initiated R.C.S. No. 61/2021 against the Petitioner seeking declaration that he is owner of the Suit property being land Gat No 103/1 area 00H - 81R and is in settled possession of the same. Temporary injunction is sought claiming that Petitioner-Defendants shall not alienate the plotting area by conversion of the land Gat No. 103/2B/2B/2 and further injunction is sought not to interfere with the possession.

2) In the said Suit, Respondent-Plaintiff sought temporary injunction which came to be allowed, however, in Appeal preferred by present Petitioner-Defendant, order thereby confirming above order came to be passed on 07/03/2022. As such, this Petition.

3) Contentions of learned counsel for the Petitioner-Defendant are, Divisional Commissioner, Pune Division, Pune vide order dated 24/02/2005 has granted permission in favour of the Petitioner to purchase the land and accordingly land stood vested in the Petitioner by virtue of sale deed and that being so, Petitioner became absolute owner of the land Gat No. 103/2B/2B/2 area 11R. Apart from above, he would urge that in view of vesting of title, further development activities are carried out by the Petitioner. Suit Area was converted non-agricultural use and is being developed accordingly in a lawful manner. In this backdrop, the contentions are, since the Petitioner is in settled possession of the Suit property by virtue of title vested in him, Court below committed an error in passing the order impugned.

4) Counsel for Respondent-Plaintiff would support the order impugned as according to him, findings recorded by both the courts below depicts that there does not exist land Gat No. 103/2B/2B/2.

He would urge that affidavit-in-reply placed on record by the Revenue Authorities in categorical terms demonstrates tampering of the revenue record in favour of the Petitioner and that being so, Court below was justified in recording finding against the Petitioner.

5) Considered rival submissions.

6) By virtue of documentary evidence, Petitioner was able to establish his title to the Suit property i.e. land Gat No. 103/1 area admeasuring 0H 81R.

7) As far as the claim of the Petitioner about his lawful purchase of rights in the property being Gat No. 103/2B/2B/2 is concerned, in categorical terms, Revenue Authorities have admitted that there does not exist any such Gat number on record and the Petitioner in connivance with Revenue Authorities appears to have tampered or forged the revenue record or such tampering of Revenue record is sought to be relied on so as to justify the case.

8) The aforesaid fact can be inferred from the pleadings which are canvassed by the Respondent-Plaintiff in an Application for grant of temporary injunction and response to the same given by revenue authorities thereby not denying the said fact.

9) In this backdrop, both the courts below in detail dealt with rival claims of the parties and accordingly passed orders which are impugned herein.

10) So as to demonstrate that on record there exist land Gat No. 103/2B/2B/2, Petitioner has failed to demonstrate the same from revenue record or any material to that effect in the form of documentary evidence but for only revenue entries and orders of Revenue Authorities. Rather Petitioner is unable to demonstrate about his lawful title to the suit property.

11) When confronted as to tampering/forging of the revenue entries as reflected in the record, there is no convincing explanation coming forward from the Petitioner. Rather it is in the interest of both the parties that alienation of suit property is permitted till disposal of the suit.

12) Once such findings are recorded by both the Courts below upon appreciation of evidence, in my opinion, this Court is required to be slow in exercising jurisdiction under Article 227 of the Constitution of India particularly having regard to the concurrent findings. In this backdrop, no case for interference in extraordinary jurisdiction is made out. Petition fails, stands dismissed.

13) Since the counsel for the Petitioner submits that Petitioner intends to take a chance before the Apex Court questioning legality of the present order and the orders passed by both the Courts below, interim relief which was in operation till 18/04/2022 to be continued for a period of four weeks from today.

[NITIN W. SAMBRE, J.]

IRESH SIDDHARAM
MASHAL

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