

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2389 OF 2020

Khiyamuddin Shaboddin Mohd
Died through legal heirs
Mohammed Farhar Begum Khiyamuddin and others ...Petitioners
Versus
Mohd Shafiuddin Mohd Fashiuddin And Others ...Respondents

Mr. G.K. Naik Thigle, Advocate for the petitioner.
Mr. H.I. Pathan, Advocate for respondents.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 13th JUNE, 2023

ORDER :

1. Petitioner is aggrieved by the order passed by District Judge-1, Biloli in Miscellaneous Civil Appeal No. 4/2019, thereby setting aside the order passed by the Trial Court below Exhibit-6 in Regular Civil Suit No. 298/2017.

2. Petitioner/plaintiff filed suit for perpetual injunction along with application Exhibit-6 for temporary injunction. Respondents/defendants appeared and resisted the suit by filing written statement and say. The Trial Court after hearing the parties allowed the application for temporary injunction and restrained the respondents from interfering into the peaceful possession of the petitioner in land Gut No. 625 paiki, admeasuring 0.25 Are land. Further an injunction is granted to

the effect that defendants No. 1 to 5 should not create third party interest in the suit property.

3. Being aggrieved by the temporary injunction granted by the Trial Court, respondents filed Miscellaneous Civil Appeal No. 4/2019, which came to be allowed by the Appellate Court. Hence, the present petition.

4. Heard the learned advocate for the petitioners and learned advocate for the respondents. Perused the memo of writ petition, annexures thereto and the impugned order.

5. It appears from the record that while allowing temporary injunction application, the Trial Court has considered old revenue record and admissions given by father of defendants namely Fashiuddin in Regular Civil Suit No. 76/1975 wherein it was stated that plaintiff Khiyamuddin was given eastern portion of 25 Ghunta land out of Survey No. 247, apart from other properties in the partition, so also, defendants' father Fashiuddin was given 1 Acre 26 Ghunta western portion land. After the consolidation, earlier Survey Nos. 221, 246, 247/1, 247/2 were converted into Gut No. 625. The Trial Court has observed that if 7/12 extract of Gut No. 625 is perused it does not contain name

of plaintiff Khiyamuddin. However, his name is mentioned in 7/12 extract of Gut No. 625 paiki. The old revenue record tried to be traced in respect of Gut No. 625 and Gut No. 625 paiki, however, same could not be located and there is no documentary evidence as to said survey numbers were converted into gut numbers. However, as per the extract of Survey No. 247 submitted by defendants, 25 Are area is recorded in the name of Khiyamuddin and 1 Acre 26 Ghunta area is recorded in the name of father of defendants Khiyamuddin. It is therefore held that said entries are made pursuant to the decree passed in Regular Civil Suit No. 76/1975. Considering the revenue entries in the 7/12 extract since long, the Trial Court granted temporary injunction in favour of plaintiff.

6. The Appellate Court set aside the order of the Trial Court holding that copy of compromise deed in Regular Civil Suit No. 76/1975 is filed on record and on perusal of the same it appears that land Survey No. 247/7 has total area of 2 Acres 11 Are and out of it 25 Are eastern land is allotted to the plaintiff. It is now contention of the plaintiff that Gut No. 247/7 is converted into land Survey No. 625 paiki. However, in order to bring that fact on record relevant consolidation record is not filed by the

plaintiff. The contention of the defendants that in the consolidation proceedings 25 Are land which is shown in the name of plaintiff is actually in land Survey No. 221(C) and same is converted into land Gut No. 625 and both land block Nos. 625 and 625 paiki are different and they are not adjacent to each other and on the basis of incorrect entries which the defendants claimed that plaintiff has obtained by joining hands with the revenue authorities the plaintiff is trying to encroach over the suit property, appealed to the Appellate Court.

7. The Appellate Court further took notice of the compromise deed dated 15.08.2019 which was entered into during the pendency of Miscellaneous Civil Appeal No. 4/2019. The Appellate Court has taken note of compromise deed and the recitals in the same in respect of land Gut No. 625 paiki admeasuring 25 Are. It is settled between the parties that 8 Are land is given to both sisters of plaintiff and 4.25 Are land is given to Khiyamuddin and remaining land was equally given to remaining 3 brothers. It is observed that there is signature of plaintiff and defendants on the said compromise and plaintiff has signed on the compromise by affixing revenue stamp and compromise deed was executed before the Notary. The Appellate

Court repelled the contention of the plaintiff that it is not real compromise and he has not signed thereon. The Appellate Court on going through the admitted signatures of the plaintiff on the plaint, vakalatnama as well as agreement-cum-compromise, found the signature to be similar to that of the plaintiff. In this view of the matter, the Appellate Court has rightly come to a conclusion that the plaintiff has no exclusive title over the suit property and he is not in exclusive possession over the suit property. The Appellate Court is justified in holding that other defendants have right in the suit property and if temporary injunction is granted against the defendants, they will be deprived from their rights and furthermore defendants are co-sharers and it is settled principle of law that temporary injunction cannot be granted against the co-sharer.

8. The order impugned in the present petition is a well reasoned order and the Appellate Court has rightly taken into consideration that prima facie case is not made out by the plaintiff and balance of convenience not in his favour and irreparable loss would be caused to the defendants if injunction order granted by the Trial Court is sustained. The Appellate Court, therefore, set aside the order passed by the Trial Court

below Exhibit-6.

9. There is no illegality or perversity in the order impugned in the present petition. Considering all above facts and circumstances and record, there is no merit in the writ petition, writ petition is therefore dismissed with no order as to costs.

10. It is informed at the bar that the suit is at the stage of recording of evidence of son of the plaintiff. The hearing of suit is expedited.

11. It is made clear that the injunction granted by the Trial Court, not to alienate and/or create third party interest in the suit property is hereby maintained.

12. At this stage, learned advocate for the petitioner seeks continuation of status quo order passed by this Court on 10.02.2020. Learned advocate for the respondents opposed the said prayer contending that on the basis of status quo order, the plaintiff is restraining the defendants from entering into their own land and cultivating the same. In that view of the matter and in view of reasons given in this order, said prayer is rejected.

[NITIN B. SURYAWANSHI, J.]