

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1451 OF 2023

RANJIT CHANDRAKANT MISAL AND ANOTHER
VERSUS
RAMDAS SAMBHAJI GHATULE AND OTHERS

Mr. Sandeep Y. Mahajan, Advocate for the Petitioners.

CORAM : SHARMILA U. DESHMUKH, J.
DATED : FEBRUARY 23, 2023.

PER COURT :

1. By the present petition, the challenge is to the order dated 06.09.2022 passed by the Appellate Court in Misc. Civil Appeal No.20 of 2021 upholding the findings of the trial Court dated 08.09.2021 below Exh.5 in RCS No.295 of 2021.

2. Respondent no.1 has instituted RCS No.295 of 2021 seeking declaration of ownership and perpetual injunction as against the present petitioners and respondent Nos.2 to 5. The suit proceeded on the basis that the respondent No.1 had purchased Gut No.1231 admeasuring 04 R at village Sirsav by registered sale deed No.1189/2020. It was further the case of the respondent no.1 that necessary mutation entry has been effected being Mutation Entry No.4100. The cause for instituting the proceeding arose as the petitioners and the respondent Nos.2 to 5, who are the adjacent

landowners were obstructing his peaceful possession.

3. In the written statement, it is the case of the petitioners that there is no such land being gut no.1231 and as such the registered sale deed No.1189/2020 is illegal, null and void. It is further the case of the petitioners that in collusion with the Revenue Authorities, the mutation entries have been effected and that the boundaries of gut no.1231 which as stated in the sale deed and in the plaint are in fact the boundaries of the petitioners' land. In the application below Exh.5, the Trial Court has held that there *prima facie* case in favour of the petitioners and as such, the order of injunction came to be passed, which finding was upheld by the Appellate Court.

4. Learned counsel appearing for the petitioners submits that the petitioners had purchased the land bearing Survey Nos.609/1 and 609/2 in the year 2019. Initially land, was bearing Survey No.609 admeasuring 3 H 63 R and after the consolidation scheme in the year 1970, the gut no.935 admeasuring 1 H 79 R and Gut No.936 admeasuring 1 H 84 R came into existence. He would further submit that as there was no land remaining in Survey No.609, there is no question of the Respondent no.1 having purchased gut no.1231 admeasuring 04 R. It is further his case that on the basis of the forged documents the mutation entry has been effected. He would further contend that the trial Court and the Appellate Court have failed to take into consideration the Khasara

Pahani Patrak of the year 1954/55, which reflects that the survey no.609 was bifurcated into 609/1 and 609/2 and the area therein has also been mentioned.

5. Considered the submissions of the learned counsel appearing for the petitioners.

6. It is settled that in exercise of the writ jurisdiction, against the discretion which has been exercised by the Trial Court and the Appellate Court merely because of a different view can be taken of the matter, the discretion should be interfered with. In the present case, there are concurrent findings of the trial Court and the Appellate Court as regards *prima facie* case and balance of convenience and prejudice in favour of the respondents. Being mindful of this fact, it is necessary to consider the case of the petitioners. The petitioners have come with the case that there is no such gut no.1231 in existence, and as such, there is no question of the respondent no.1 being in possession or seeking declaration or even an order of temporary injunction. At the stage of temporary injunction what is relevant is the factum of possession as the order of temporary injunction seeks to restrain the other parties from interfering with the possession of the party seeking the relief of injunction. In the present case, *prima facie*, it appears that the respondent No.1 is in possession of gut no.1231 by virtue of a registered sale deed and consequent mutation entries in the revenue record has also been effected. The submission of the

learned counsel for the petitioners that the entries is in collusion with the revenue authorities will be tested at the time of the trial. At this stage, of grant of temporary injunction it is to be noted that there is no document produced by the petitioners to show the possession of the land in respect of which the respondent no.1 claims possession. The reliance of the petitioners is on the Khasara Pahani Patrak of the year 1954/1955 which shows that the survey no.609 was bifurcated into 609/1 and 609/2. The validity of the said bifurcation can be tested at the time of trial. At this stage, the respondent No.1 has produced the valid registered sale deed in respect of gut no.1231 and also has a mutation entry in his favour. In the absence of any document of possession being produced by petitioners, it will have to be presumed that possession follows title.

7. In light of the above and considering the limited case made out by the petitioners that there is no such gut no.1231, which will necessarily have to be tested by leading the necessary evidence, in my opinion, there is no necessity of interfering with the concurrent *prima facie* findings of the Trial Court and the Appellate Court.

8. In light of the above, the writ petition is devoid of merits and stands dismissed.

9. Needless to state that the observations made herein are *prima facie* observations and are made only for the purpose of

testing the validity of the orders passed by the Trial Court and the Appellate Court, and as such, all further proceedings have to be conducted by the Trial Court on its own merits and in accordance with law and uninfluenced by the observations made herein.

(SHARMILA U. DESHMUKH, J.)