



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5915 OF 2022

Shantabai @ Rukminbai Tulshiram
Sabane and others .. Petitioners

Versus

Putlabai Balappa Sakhare and others .. Respondents

Shri Shailendra S. Gangakhedkar, Advocate for the Petitioners.
Shri Chandrakant P. Patil, Advocate for the Respondent No. 1.
The Respondent Nos. 2 to 6 are served.

CORAM : SHAILESH P. BRAHME, J.

CLOSED FOR ORDER ON : 06.12.2023
ORDER PRONOUNCED ON : 12.12.2023

FINAL ORDER :

. Heard the learned counsel for the litigating sides finally at the admission stage.

2. The petitioners are challenging concurrent findings of facts recorded for clamping injunction of not to obstruct the possession of the respondent Nos. 1 and 2. They are original defendant Nos. 1 to 3. Present respondent Nos. 1 and 2 are original plaintiffs in R.C.S. No. 296 of 2018.

3. It is the case of the petitioners that land Sy. No. 30/1/2 was

belonging to Balappa, husband of the respondent No. 1 and the father of the respondent No. 2. It was agreed to be sold to the petitioners and the possession was handed over. There was oral agreement. A mutation entry No. 2816 was recorded. Additional Collector by order dated 05.01.2017 quashed the mutation entry. However, the Additional Commissioner reversed the decision.

4. The petitioners are continuously in possession of the suit land. The petitioner No. 1 had filed R.C.S. No. 137 of 1996 for injunction against the original owner Balappa. It was contested and decreed on 03.10.1996. Decree was not challenged further. By suppressing material facts, the respondent Nos. 1 and 2 filed present R.C.S. No. 296 of 2018 for declaration and injunction. The suit itself is barred by limitation. There is application for temporary injunction at Exhibit 05.

5. It is the case of the respondents that the decree passed in R.C.S. No. 137 of 1996 was collusive. No possession was ever handed over to the petitioners. The revenue record indicates the names of the respondent Nos. 1 and 2. The petitioners cannot become owners unless there is a document of title. Mutation entry recorded in favour of the petitioners does not confer the title.

6. It is further contended that the decree passed in R.C.S. No. 137 of 1996 is obtained by fraud and collusion. It is the *modus operandi* of the respondent Nos. 3 and 4, who are defendant Nos.

3 and 4 to obtain collusive decree of injunction or to obtain the compromise decree to grab the landed properties. The theory of oral partition is inconsistent with the stand taken in the notice. The respondents have documentary evidence of electricity bill, receipts of seeds and fertilizers, photographs and the affidavits of the adjoining occupants to show that they are in possession. A crop loan has also been extended to the respondents considering their possession.

7. The Trial Judge was pleased to grant temporary injunction by order dated 10.12.2021. Being aggrieved petitioners preferred Misc. Civil Appeal No. 12 of 2021. It was dismissed on 10.02.2022.

8. The learned counsel for the petitioners has made following submissions :

A. The petitioners are transferee in possession and the possession is settled one. It is fortified by decree passed in R.C.S. No. 137 of 1996. Hence both the Courts have committed perversity in clamping injunction against them.

B. Mutation entry No. 2816 was recorded on the basis of possession which was confirmed by the Court of Commissioner. Though Additional Collector decided against the petitioners, his order was reversed.

C. Present suit and the application at Exhibit 05 do not disclose the order passed by the Commissioner on 16.03.2018,

which is against the respondents. The order has not been challenged further.

D. Both the Courts below have committed error of jurisdiction in holding that there is *prima facie* case for granting injunction.

E. The lower Appellate Court exceeded his jurisdiction and conducted almost mini trial at the interlocutory stage. The findings recorded in paragraph Nos. 19 to 22 by the lower Appellate Court are unwarranted and can be dealt with during the course of trial.

F. The documents produced by the respondents regarding the receipts, photographs, electricity bill, affidavits are manoeuvred.

G. There is no *prima facie* case. The petitioners are in possession and irreparable loss is being caused.

H. Lastly, it is submitted that R.C.S. No. 137 of 1996 was contested and thereafter decided on merits.

9. The learned counsel for the petitioners relies upon the following judgments of the Supreme Court and this Court :

- (i) Lakshmi @ Bhagyalakshmi and another Vs. Jayaram (Dead) by L.Rs. reported in 92013) 9 SCC 311.
- (ii) Ramegowda (Dead) By L.Rs. Vs. M. Varadappa Naidu (Dead) by L.Rs. and another reported in (2004) 1 SCC 769.
- (iii) Shamrao Ganpat Chintamani Vs. Kakasaheb Lxman Gorde reported in 2008(2) Mh. L. J. 819.

- (iv) Baban Anantrao Naik Vs. Sau. Pramila Uttamrao Yenare and another reported in 2011 (6) All M. R. 15.

10. Per contra, the learned counsel for the respondent Nos. 1 and 2 has made following submissions :

- a. There are concurrent findings of facts recorded by both the Courts below on the basis of material available on record. The findings are plausible.
- b. There is consistent revenue record to indicate the possession of the respondents from 1990 to 2007, which bellies the theory of the petitioners having put in possession in 1996.
- c. There is cogent evidence on record to show possession of the respondents in the form of bills, affidavits, revenue record, photographs and the crop loan.
- d. There is absolutely no title document in favour of the petitioners. The mutation entry does not confer title. Hence the theory of the petitioners is unacceptable.
- e. The respondent Nos. 3 and 4, lawyers are habitual in obtaining the collusive decrees to grab the properties of the innocent persons. By same *modus operandi* the decree was obtained in R.C.S. No. 137 of 1996.
- f. The theory of the petitioners of having secured possession by oral agreement is incompatible. As the decree obtained in R.C.S. No. 137 of 1996 is by fraud, the same can be challenged in

the present suit, which is well within limitation.

11. The learned counsel for the respondents relies upon the judgment rendered by this Court in the matter of **Baban Anantrao Naik Vs. Sau. Pramila Uttamrao Yenare and another** reported in **2011(6) All MR 15**.

12. I have considered rival submissions of the parties and gone through the documents on record with the assistance of the learned counsel.

13. Undisputedly, both the Courts have recorded findings against the petitioners. R.C.S. No. 296 of 2018 is filed for declaration and injunction and is pending before the Trial Court. There are contentious facts in issue involved in the matter which are as follows :

I. Validity of the decree in R.C.S. No. 137 of 1996 and allegations of fraud and collusion.

II. Whether there was oral agreement or written agreement to sell in favour of the petitioners ?

III. The purport of mutation entry No. 2816 and mutation entry No. 5353.

IV. Whether the suit is within limitation or not ?

V. The purport of not challenging decree passed in R.C.S. No.

137 of 1996.

14. To address the above referred issues full fledged trial is required. At the interlocutory stage, it is not possible and permissible to embark an enquiry on above issues. It is unsafe to infer anything in respect of above issues except to decide *prima facie* case.

15. As I am dealing with the claim of temporary injunction, I restrict my scrutiny to the parameters of *prima facie* case, possession, irreparable loss and balance of convenience.

16. To prove the factum of possession, the petitioners have relied upon the decree passed in R.C.S. No. 137 of 1996 and mutation entry No. 2816. R.C.S. No. 137 of 1996 was decided on 03.10.1996. The decree of injunction has not been challenged by the respondents. However, it cannot be inferred that the petitioners are still in possession when cause of action arose in the present suit or when the application for temporary injunction is decided. It is to be examined whether the petitioners continuously remained in possession from 1996 till today.

17. The petitioners have harped on mutation entry No. 2816, which is confirmed upto the Commissioner by order dated 16.03.2018. It is trite law that mutation entry does not confer title. It is very difficult to approve the submission that just because there is mutation entry, the petitioners are in possession of the suit land. Unless there is corroborative evidence, sole

mutation entry is insufficient to prove the possession. Therefore, I am of the considered view that non disclosure of the orders passed by the Commissioner in the plaint or Exhibit 5 is inconsequential. The order of temporary injunction which is discretionary cannot be faulted on that count.

18. The learned counsel for the petitioner challenged the documents produced by the respondents namely revenue record, electricity bill, assessment list, bills of seeds/fertilizers, photographs, affidavits, documents of crop loan being concocted and manoeuvred. However, there is no corroborative material to support this plea. Both the Courts below are justified in relying upon the material produced by the respondents to decide *prima facie* case in their favour. At this stage, the material produced by the respondents cannot be overlooked.

19. The respondents have relied upon voluminous evidence to show that they are still in possession of the suit land. The 7/12 extract of the suit land shows possession of Balappa since 1990 upto 2007. The revenue record is against the theory of petitioners of having secured possession in 1996. There are receipts of seeds and fertilizers, electricity bill, receipts of lending tractor and the affidavits of adjoining occupants. Besides that, the respondents have relied upon the documents showing crop loan having been incurred by them. I am of the considered view that a strong *prima facie* case is made out indicating possession. No fault can be found in the findings recorded by the Courts below for *prima facie* case.

20. At this juncture, I do not propose to go into various judgments and the decree placed by the respondent Nos. 1 and 2 on record for making out a plea that there was *modus operandi* of the concerned lawyers to obtain decree collusively or by compromise. That is to be decided at the time of final hearing in suit. Exchanges of the notices and reply issued by the advocates on behalf of the parties can be dealt with at the time of hearing.

21. I find that both the Courts below have properly exercised the jurisdiction. They have considered all aspects of the matter. They are justified in holding that *prima facie* case is made out by the respondents for granting injunction. The submissions of the learned counsel for the petitioners for irreparable loss are also not appealing. Once the respondents are held to be in possession, there cannot be loss as such to the petitioners.

22. The judgment cited by the petitioners in the matter of **Lakshmi @ Bhagyalakshmi and another Vs. Jayaram (Dead) by L.Rs.** (*supra*) and especially para Nos. 2, 6 and 7 is not helpful for deciding claim of temporary injunction. The ratio laid down in para Nos. 15 to 17 of the judgment in the case of **Shamrao Ganpat Chintamani Vs. Kakasaheb Lxman Gorde** (*supra*) and in the matter of **Baban Anantrao Naik Vs. Sau. Pramila Uttamrao Yenare and another** (*supra*) is not disputed. Applying the same ratio, both the Courts below have recorded that the respondents are in possession. So far as law laid down by the Supreme Court in the case of **Ramegowda (Dead) By L.Rs. Vs. M. Varadappa**

Naidu (Dead) by L.Rs. and another (supra) is concerned, that may not enure to the benefit of the petitioners. It is not recorded by both the Courts below that the petitioners are in settled possession, though unlawful.

23. For the reasons stated above, I do not find any perversity or patent illegality in the impugned judgment and orders. I do not find any merit in the petition to exercise writ jurisdiction. The writ petition is dismissed.

[SHAILESH P. BRAHME, J.]

bsb/Dec. 23