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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4657 OF 2022

S. Jaideepsingh Shersingh Kamthekar PETITIONER
Age – 60 years, Occ – Agri
R/o Town Market Soccity,
Opp. Vidyut Bhavan,
Datta Nagar Road, Nanded
Taluka and District - Nanded

VERSUS

S. Anandsingh S. Mohansingh Kamthekar RESPONDENT
Age – 60 years, Occ – Service & Agri
R/o Kamtha, Taluka – Ardhapur
District - Nanded

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Mr. Nanabhau R. Thorat, Advocate for the petitioner
Mr. S. B. Ghatol Patil, Advocate for the respondent

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 17th AUGUST, 2023

ORDER :

1. The petitioner is aggrieved by the order dated 14th August, 2021 passed below Exhibit-5 in Regular Civil Appeal No. 42 of 2021, by the learned District Judge-1, Nanded, thereby rejecting the application filed by the petitioner, for temporary injunction and stay to the judgment and decree passed by the Trial Court in Regular Civil Suit No. 61 of 2013.
2. The respondent – plaintiff claims to have purchased the

suit land, by registered sale deed dated 16th October, 1982. Mutation Entry of his ownership is certified in the year 2013. The petitioner challenged the Mutation Entry, but his challenge failed before the Revenue Authorities.

3. The respondent, on 1st October, 2013 filed Regular Civil Suit No. 61 of 2013 against the petitioner. In the said suit, the petitioner filed written statement and counter claim. Application Exhibit-5, filed by the respondent – plaintiff seeking temporary injunction was allowed by the Trial Court, by order dated 28th April, 2015, thereby restraining the petitioner – defendant from causing obstruction and interfering in the peaceful possession of the respondent – plaintiff over the suit land. Thereafter, Regular Civil Suit No. 61 of 2013 was decreed with costs on 17th July, 2017. From the judgment and decree passed in the suit, it is clear that the petitioner – defendant has failed to lead any oral or documentary evidence, to prove his defense or counter claim. By the said judgment and decree, the petitioner – defendant is perpetually restrained from obstructing possession of the respondent-plaintiff over the suit property bearing Gut No. 395, area admeasuring 2 Hectare 2 Are, situated at village Kamtha (Bk), Taluka – Aradhapur, District – Nanded.

4. The petitioner filed Regular Civil Appeal No.42 of 2021

challenging the decision in Regular Civil Suit No. 61 of 2013. In the meanwhile, the respondent filed Regular Darkhast No.1 of 2021 for execution of the judgment and decree passed in his favour in RCS No. 61 of 2013.

5. In the appeal, by filing application Exhibit-5, the petitioner prayed for stay to the execution and operation of *ex parte* judgment and decree in Regular Civil Suit No. 61 of 2013. In the alternate, the petitioner has prayed for *status quo* order. After hearing the parties, the Appellate Court has rejected the application. Hence, the present petition.

6. Heard learned advocate for the petitioner and the learned advocate for the respondent. Perused the memo of writ petition, its annexures and the impugned order.

7. Learned advocate for the petitioner, by relying on the partition deed, submits that in the partition, the suit land has come to the share of his predecessor and since the partition, he is in possession of the suit land. In this view of the matter, the Appellate Court ought to have allowed the Exhibit-5 application filed by the petitioner.

8. Per contra, learned advocate for the respondent vehemently opposed the prayer of the petitioner contending that

the petitioner has relied on forged documents i.e. partition deed, wherein there is interpolation, therefore, the petitioner is not entitled for any equitable relief.

9. *Prima facie*, there appears substance in the submission of the learned advocate for the respondent that there is interpolation in the partition deed, relied on by the petitioner. It is a matter of record that by way of a registered sale deed dated 6th October, 1982, the land is purchased by the respondent and Mutation Entry recording his name is confirmed by the revenue authorities, by rejecting the challenge raised by the petitioner. Temporary injunction granted in RCS No. 612 of 2013 after hearing the petitioner, was operating in favour of the respondent since 28th April, 2015 and the same is confirmed by judgment and decree passed by the Trial Court on 17th July, 2017. In the light of the above, there is no merit in the contention raised by the petitioner that in view of partition, the suit land has come to the share of his predecessor.

10. The District Court has observed that, in order to prove possession over the suit land, no document is filed by the petitioner on record. On the other hand, the respondent has filed various documents, including registered sale deed. The respondent has also filed on record statements of adjoining

agriculturists, in support of his case that he is in possession of the suit land.

11. In the light of all these circumstances, no fault can be found with the order impugned in the present petition. The petitioner has failed to make out any case to warrant interference in extraordinary writ jurisdiction. Writ petition being devoid of merit is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE