

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10957 OF 2016

Ganpat S/o Gangaram Navale

.... Petitioner

Versus

Lahu Pandu Navale

Since deceased through his L.Rs.

Bhausahab S/o Lahu Navale

and others

.... Respondents

.....

Mr. Satyajeeet S. Dixit, Advocate for the Petitioner

Mr. R.D. Bhalerao, Advocate for Respondent Nos.1-A to 1-D

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 12th September, 2023

ORDER :

1. The petitioner is aggrieved by the order passed by Joint Civil Judge, Junior Division, Sangamner in Civil Misc. Application No.65 of 2009, thereby rejecting the application filed by the petitioner for means profit.

2. By the decree passed in Regular Civil Suit No.217 of 1993, it was held that the respondent has encroached on 3 ½ R area of land belonging to the petitioner. In the said judgment and decree, enquiry to the means profit was permitted. The said judgment and decree is modified in Regular Civil Appeal No.44 of 2002, and it was held that

respondent has encroached on 1 ½ R area of the petitioner. The petitioner, thereafter, filed Civil Misc. Application No.65 of 2009 for means profit of the period from 30/06/21993 to 30/04/2009. Both the parties led their respective evidence, and the Trial Court has rejected the said application. Hence, the present petition.

3. Heard the learned advocate for the petitioner and the learned advocate for respondents. Perused the writ petition memo, annexures thereto and the impugned order.

4. Learned advocate for the petitioner, by relying on Section 58 of the Indian Evidence Act, submits that in view of admission given by the respondent in the cross-examination, the Trial Court ought to have allowed the application for means profit. He submits that petitioner placed before the Trial Court copy of 7/12 extract and the crop entries, which shows that respondent was taking cash crops in the encroached portion. This aspect is ignored by the Trial Court. Therefore, the impugned order is liable to be quashed and set aside.

5. Learned advocate for respondents, on the other hand, supports the impugned order.

6. Perusal of the evidence led by the parties shows that the respondent during his cross-examination has admitted that he was taking cash crops in encroached portion, but in the next breath he has denied that he was taking cash crops in the encroached portion from 1993. The crop entry extract placed on record by the petitioner shows that crops like *Bajra* and Tomatoes were being taken in the land owned by the respondent. The petitioner has not led any evidence and/or brought before the Trial Court cogent evidence to demonstrate that the respondent has taken cash crops in the encroached portion. The Trial Court has rejected the application for means profit on the ground that the petitioner has failed to lead evidence to prove that the respondent was taking cash crops in encroached portion. Findings recorded by the Trial Court are on the basis of the material placed on record by the parties. Merely because another view is possible, these findings are not liable to be interfered with in extraordinary writ jurisdiction. There is no illegality or perversity in the order impugned in the present petition. The writ petition being devoid of merit is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane