

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5479 OF 2023

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| 1. Ganesh @ Vijay Bansi Patil | |
| 2. Vilas Bansi Patil | |
| 3. Vishvanath Bansi Patil | Petitioners |

Versus

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| 1. Vishvajit Bansi Patil | |
| 2. Sukanya w/o Vishvajit Patil | Respondents |

Mr. P.N. Jain, Advocate for the petitioners.
Mr. S.P. Shah, Advocate for the respondents.

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 1st AUGUST, 2023

ORDER :

1. Petitioners are aggrieved by the order passed by learned Joint Civil Judge, Senior Division, Shahada, below Exhibit-5, in Regular Civil Suit No. 9/2023 and the order passed by learned District Judge-1, Shahada, in Miscellaneous Civil Appeal No. 02/2023, thereby rejecting the application filed by the petitioners seeking injunction, not to change nature of the suit land and not to create third party interest.

2. Petitioners/plaintiffs filed suit for partition and separate possession. Gat No. 112 admeasuring 1 Hectare 30

Are, situated at Shahada, District-Nandurbar, is one of the suit property. Along with the suit, application Exhibit-5 for injunction not to create third party interest and change the nature of the suit property is filed, which is rejected by the Trial Court. Being aggrieved, petitioners filed Miscellaneous Civil Appeal No. 2/2023. The Appellate Court has dismissed the appeal and confirmed the order of the Trial Court. Hence, the present petition.

3. Heard the learned advocate for the petitioners and learned advocate for the respondents. Perused the memo of writ petition, its annexures, impugned orders and the reply filed by respondents.

4. Trial Court as well as the Appellate Court from the documents placed on record have held that the suit land in respect of which injunction is sought by the petitioners is not ancestral property and father of the petitioners and defendants namely Bansi Patil was not tenant of the suit land. After the death of Bansi, on issuance of certificate under Section 88(B) of the Bombay Tenancy & Agricultural Lands Act 1948 (for short 'said Act'), the tenancy automatically come to an end and

therefore Bansi Patil did not remain as protected tenant of the suit land. The Tenancy Court in tenancy proceeding has observed that, tenancy is not heritable, and therefore names of legal heirs of Bansi i.e. plaintiffs and defendants cannot be recorded in 7/12 extract. Both the Courts, after considering the findings recorded by the competent Tenancy Court have observed that the tenancy of Bansi has already come to an end and he did not remain protected tenant of the suit land. It is further held that tenancy rights are not heritable in nature. Both the Courts have further held that original owner of the suit land, after the death of Bansi Patil, entered into a compromise and transferred the ownership of suit land to defendant No. 1. Considering all these aspects, both the Courts were of the view that the plaintiffs have prima facie failed to prove that the suit land is their ancestral family property and they have undivided share in it.

5. Petitioners at Exhibit-G have annexed copy of Inquiry Application No. 17/2019 filed by the original owner under section 36(1)(A) of Maharashtra Public Trust Act, 1950, seeking permission of the Charity Commissioner to transfer the suit land (Gat No. 112) in the name of Defendant No. 1- Vishvajit Patil. In the said application, it is specifically stated that Bansi Patil was

tenant of the suit land and Gat No. 185, as per the mutation entry No. 859, dated 29.06.1951. After the death of Bansi Patil, in the year 2004, names of plaintiffs and defendants were recorded to both the lands. Thereafter, by relinquishment deed dated 10.04.2005, all the legal heirs relinquished their rights in both the lands in favour of defendant No. 1- Vishvajit Bansi Patil. Therefore, permission was sought to transfer the suit land in the name of Vishvajit Patil.

At Exhibit-H, affidavit of member of the trust in support of Application No. 17/2019 is placed on record. At Exhibit-I, affidavit of defendant No. 1 titled as 'कुळाचे वारसाचे शपथपत्र' in Application No. 17/2019 is placed on record.

6. By order dated 29.09.2021, passed by learned Joint Charity Commissioner, Nashik, Application No. 17/2019 is allowed and permission is granted to transfer of the suit land in the name of defendant No. 1.

7. On perusal of these documents, it prima facie appears that after the death of Bansi Patil, names of plaintiffs and defendants were entered to the suit land and defendant No.

1 has entered his name to the suit land by entering into compromise with the original owner claiming that all other legal heirs have relinquished their right in the suit land in his favour.

8. At the time of deciding application Exhibit-5 and Miscellaneous Civil Appeal No. 2/2023, these documents, admittedly, were not placed before the Trial Court or the Appellate Court. Since, these documents have direct bearing on the issue of injunction, these are required to be taken into consideration while deciding application Exhibit-5. In that view of the matter, both the impugned orders cannot be sustained. In the result, following order:

ORDER

- (i) Writ petition is allowed.
- (ii) Impugned order dated 04.02.2023, passed by learned Joint Civil Judge, Senior Division, Shahada, Nandurbar, below Exhibit-5, in Regular Civil Suit No. 9/2023 and order dated 03.04.2023, passed by learned District Judge-1, in Miscellaneous Civil Appeal No. 2/2023, are hereby quashed and set aside.
- (iii) Trial Court shall decide application Exhibit-5 afresh, on its own merits, after taking into consideration the documents at Exhibit- G, H and I.

9. Needless to state that the observations in this order shall not influence the Trial Court while deciding application Exhibit-5 on merits.

[NITIN B. SURYAWANSHI, J.]