

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

WRIT PETITION NO.11337 OF 2023

**AVINASH APPARAO DESHMUKH
VERSUS
SHIVLINGAPPA MADOLAPPA (DECEASED) THROUGH LRS
RAJSHEKHAR GURU SHIVLINGAPPA MAHAHRAJ AND OTHERS**

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Mr. Shrikant B. Madde, Advocate for Petitioner
Mr. P.G. Borade, AGP for Respondent Nos.3 and 4
Mr. V. D. Gunale, Advocate h/f Mr. V. G. Kodale, Advocate for
Respondent No.1

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 12th SEPTEMBER, 2023

PER COURT :

1. Leave to correct the prayer clause.
2. Petitioner is aggrieved by the order dated 03/08/2023, passed by learned District Judge-1, Ahmedpur, in Misc. Civil Appeal No.01/2019, thereby allowing the appeal filed by respondent No.1 and setting aside the order of temporary injunction granted by the trial Court in favour of petitioner.
3. Petitioner/plaintiff has filed Regular Civil Suit No.09/2018, for declaration of ownership and perpetual injunction in respect of the suit property i.e. land Gut No.140, ad-measuring 02 H 34 R, situated at village Dhanora Kd., Tq. Ahmedpur, Dist. Latur. Respondents/defendants opposed the suit by filing written

statement and counter claim. Along with the suit, application Exhibit-5 for temporary injunction is filed. After hearing the parties, the trial Court allowed the application Exhibit-5. Respondent No.1 challenged the said order by filing appeal, which is allowed by the appellate Court. Hence, the present petition.

4. Heard learned advocate for petitioner, learned advocate for respondent No.1 and learned Assistant Government Pleader for respondent Nos.3 and 4. Perused the writ petition memo, annexures thereto, the impugned order and affidavit-in-reply filed by respondent No.1 as well as citations relied upon by the respective parties.

5. Trial Court while allowing application Exhibit-5 has held that, till the year 2016, on the basis of registered sale deed executed by respondent No.2, petitioner's name is recorded in the 7/12 extract and revenue records. Accordingly, Mutation Entry No.375 is certified. Respondent No.1 has not objected to the said revenue record or has not prayed for setting aside the same. Respondent No.1 sought cancellation of Mutation Entry No.579 which recorded respondent No.2's name in the suit property, in the year 1988, by making application on 10/08/2016. The said proceeding is still pending before the Deputy Commissioner, Aurangabad. After considering the record of consolidation scheme

and the documents placed on record, trial Court has held that, considering the name of respondent No.2 vendor of the petitioner, to the suit property, mutation entries are certified. Petitioner has produced affidavits of seven adjoining agriculturists, wherein it is stated that petitioner has possession over the suit property since the date of his purchase and respondent No.1/defendant No.1 has no concern with the suit property. On the basis of this material, trial Court has recorded finding that, *prima facie* the possession of petitioner/plaintiff over the suit property, is proved. Even the crop entries are taken in the name of petitioner. Since mutation entry recording name of petitioner's vendor/defendant No.2 is challenged, defendant No.1 has *prima facie* obstructed possession of the petitioner over the suit property. If the injunction is not granted, petitioner will suffer irreparable loss and he will not be in a position to harvest the crops sown by him. Mutation entry recording name of petitioner to the suit property on the basis of sale deed, still stands and respondent No.1/defendant No.1 has not objected to the same. Therefore, trial Court has held that interim injunction deserves to be granted in favour of the petitioner.

6. Appellate Court, on the other hand, has interfered in the discretion exercised by trial Court by observing that, "*On the date of institution of suit the entries in the name of defendant No.2*

got canceled. Consequently revenue record does not indicate any right of plaintiff or his vendor. The sale deed executed in favour of plaintiff by defendant No.2 is no consequence, when defendant No.2 being vendor has no right in the suit property". It is further observed that, possession of defendant No.1 over the suit property is forthcoming from the year 1961 as the owner and erroneous entries which were recorded in the name of defendant No.2 were rectified by way of due process. Appellate Court, therefore, has held that, plaintiff has not satisfactorily established his possession over the suit property and the findings recorded by learned trial Judge holding possession of the plaintiff, is not substantiated by authenticated documentary evidence on the date of institution of suit.

7. The appellate Court has entered into the merits of rival contentions by making above observations. At the time of deciding temporary injunction application, *prima facie* possession is to be seen, so also, whether balance of convenience is in favour of the plaintiff or defendants, and to whom irreparable loss would be caused has to be ascertained. Trial Court in it's order passed below Exhibit-5 has categorically recorded a finding that *prima facie* petitioner is in possession of the suit property, on the basis of registered sale deed executed in his favour. Entries to that effect

are recorded in the revenue record of the suit property. Adjoining agriculturists have also supported the possession of petitioner/plaintiff over the suit property, by filing affidavits. Crop entries of the suit land are taken in the name of petitioner.

8. It appears that respondent No.1/defendant No.1 has not challenged the recording of name of petitioner in the revenue record, though he has challenged the mutation entry recording name of respondent No.2 vendor of the petitioner, to the suit property. However, that by itself does not in any manner show that petitioner was not in possession of the suit property, since the date of execution of sale deed in his favour.

9. The criteria to be considered in temporary injunction matters is laid down by the Supreme Court in ***Wander Ltd. and Another Vs. Antox India Pvt. Ltd, 1990 (Supp) SCC 727***, which is followed in ***Mohd. Mehtab Khan and Others Vs. Khushnuma Ibrahim Khan and Others, (2013) 9 SCC 221***. In the above citations it is held that, when discretion is exercised by the trial Court in respect of grant of temporary injunction, it is not permissible for the appellate Court to interfere in the same, unless exercise of discretion by trial Court is palpably incorrect or untenable. If the view taken by the trial Court is a possible view, the same is not liable to be interfered with by the appellate court.

10. In the case in hand, appellate Court has interfered in the discretion exercised by the trial Court without assigning proper reasons. Merely because another view is possible, appellate Court has interfered in the order passed by the trial Court. The impugned order is, therefore, unsustainable in the law and facts of the present case. Hence, the following order:-

ORDER

- (I) Writ petition is allowed.
- (II) Impugned order dated 03/08/2023, passed in Misc. Civil Appeal No.01/2019, is quashed and set aside.
- (III) Since the suit is of the year 2018, hearing of the suit is expedited.
- (IV) Petitioners shall not create any third party interest in the suit property till the decision of the suit.

11. Needless to state that observations in this order are *prima facie* and shall not influence the trial Court while deciding the suit on merits.

(NITIN B. SURYAWANSHI, J.)