

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11381 OF 2022

Ananta S/o Rambhau Palkar

.... Petitioner

Versus

Rajendra S/o Rambhau Palkar
and another

.... Respondents

.....

Mr. B.R. Kedar, Advocate for the Petitioner

Mr. P.B. Salunke, Advocate for Respondent No.1

Mr. S.R. Deshpande, Advocate for Respondent No.2

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 20th September, 2023

ORDER :

1. Leave to correct the prayer clause.
2. This petition, filed under Article 227 of the Constitution of India, takes exception to the order passed by learned District Judge-1, Ambad in Misc. Civil Appeal No.23 of 2022, thereby allowing the Misc. Civil Appeal and setting aside the order passed by Trial Court below Exhibit-5.
3. Petitioner/plaintiff filed suit for injunction in respect of suit property i.e. Gut No.43 admeasuring 10 Hector 19 R, against respondents/defendants. In the suit, application Exhibit-5 filed by petitioner/plaintiff seeking temporary injunction against respondents/defendants. Trial Court allowed temporary injunction application. Defendants, being aggrieved

by the said order, challenged the same in Misc. Civil Appeal No.23 of 2022, and the Appellate Court has set aside the order passed by Trial Court. Hence, the present petition.

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

5. Learned advocate for defendants vehemently opposed the prayer of petitioner contending that in the partition claimed by plaintiff, no share is given to the mother or sisters. Plaintiff has taken disadvantage of the revenue entries and has filed suit claiming that the suit property has been given to him by deceased father by way of gift deed. Learned advocate for respondents in support of her contention has relied on *Ajit Kaur alias Surjit Kaur Vs. Darshan Singh (dead) Through L.Rs. and ors. AIR 2019 SC 2122* in support of his contention.

6. Trial Court while allowing application Exhibit-5 has taken into consideration the gift deed as well as revenue entries taken after partition was effected. Appellate Court, however, set aside the order of Trial Court holding that, gift

deed is not referred in the order of Trial Court, and it is not referred as to how plaintiff becomes owner of additional 68 R land in suit property by virtue of gift deed. It is also observed that though there are entries of plaintiff's name in suit property, the revenue record is maintained for fiscal purposes to collect revenue. No document is placed on record to show that partition was effected and that no share is given in alleged partition to the sisters and mother. On these grounds the Appellate Court has set aside the order.

7. Perusal of documents placed on record, particularly the revenue entries, reveals that after partition, revenue entries were effected by recording the names of plaintiff and defendants to the respective shares allotted to them. Plaintiff and defendant have also obtained loan for improvement of said land allotted to their share. There is a revenue entry showing that plaintiff has obtained loan for improvement of suit property. A gift deed is also placed on record in support of the contentions of plaintiff. In that view of the matter, Trial Court was right in granting temporary injunction in favour of plaintiff.

8. Appellate Court has ignored settled legal position that partition can even be effected orally. Revenue entries are not properly appreciated by the Appellate Court and the Appellate Court has erred in upsetting the order passed by Trial Court merely because different view is possible. In view decision 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*, approach of the Appellate Court is incorrect and unjust. Trial Court was right in coming to the conclusion that plaintiff has established *prima facie* case and balance of convenience is in favour of plaintiff. Irreparable loss would be caused to plaintiff if temporary injunction is not granted. In that view of the matter, Trial Court has rightly granted temporary injunction in favour of plaintiff.

9. In *Ajit Kaur* (supra), it is held that, mutation of property in revenue records does not create or extinguish title nor has it any presumptive value on title. Mere possession would not confer pre-existing right of possession over subject property to claim full ownership rights after coming into force of Act of 1956. There cannot be dispute about the said

proposition, however, in the facts of the present case, since *prima facie* possession over the suit property is established by petitioner/plaintiff by placing on record documents in support of his possession, this decision is of no assistance to the case of respondents.

10. The criteria to be considered in temporary injunction matters is laid down by the Supreme Court in ***Wander Ltd.*** (supra) and ***Mohd. Mehtab Khan*** (supra), wherein 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. This ratio is applicable to the present case.

11. In the result, the writ petition is allowed.

12. Impugned order dated 01/10/2022 passed by learned District Judge-1, Ambad in Misc. Civil Appeal No.23 of 2022 is hereby quashed and set aside.

13. Needless to state these observations are *prima facie* and they shall not influence the Trial Court, while deciding the suit on merits.

[NITIN B. SURYAWANSHI]
JUDGE

S.P Rane