

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

WRIT PETITION NO.14712 OF 2019

Goverdhan s/o Sitaram Patil
Age: 77 years, Occu.: Agriculture,
R/o: At Post. Kasbe Tadwale,
Tq. & Dist. Osmanabad.

... Petitioner
(Orig. Plaintiff)

Versus

1. Bhagwat s/o Narayan Patil
Age: 60 years, Occu.: Agriculture,
2. Milind s/o Bhagwat Patil
Age: Major, Occu.: Agriculture,
3. Arun s/o Bhagwat Patil
Age: 29 years, Occu.: Agriculture,
4. Ajit Bhagwat Patil
Age: 27 years, Occu.: Agriculture,
All R/o: At Post. Kasbe Tadwale
Tq. & Dist. Osmanabad.

... Respondent
(Orig. Defendants)

...

Mr. V. D. Salunke, Advocate for Petitioner
Mr. M. B. Kolpe, Advocate for Respondent Nos.1 to 4

...

CORAM : NITIN B. SURYAWANSHI, J.

**RESERVED ON : 10th AUGUST, 2023
PRONOUNCED ON : 07th SEPTEMBER, 2023**

ORDER :

1. By this petition, petitioner challenges order dated 02/11/2017, passed by learned 4th Joint Civil Judge, Junior Division, Osmanabad, below Exhibit-5 in Regular Civil Suit No.543/2017 and the order dated 13/08/2019, passed by learned District Judge-3, Osmanabad, in Misc. Civil Appeal No.102/2017.

2. Petitioner/plaintiff has filed the suit for injunction in respect of land Gut No.662, ad-measuring 16 H 22 R, situated at village Kasbe Tadvale, Dist. Osmanabad, contending that the suit land is tenanted land and the same is in possession of the plaintiff since his father Sitaram. Along with the suit, application Exhibit-5 is filed for temporary injunction. Defendants/respondents appeared and opposed the case of plaintiff. They claimed that defendant Nos.2 to 4 are sons of defendant No.1 and they being owners are in possession of the suit land. Plaintiff filed 7/12 extract and revenue record in support of his claim that he is in possession of the suit property. Trial Court rejected the application of plaintiff. Order of the trial Court is unsuccessfully challenged by the plaintiff by filing Misc. Civil Appeal No.102/2017. Being aggrieved by both these decisions, present writ petition is filed.

3. Heard learned advocate for petitioner and learned advocate for respondents.

4. Learned advocate for petitioner/plaintiff strenuously urged that revenue entries showing possession of petitioner are placed on record in Writ Petition No.14728/2019 and the same were placed before the trial Court to show that since 1955-1956 father of the plaintiff was occupying the suit land on lease and his possession is shown as tenant upto the year 2015-2016. By relying on

mutation entries, he submits that this is sufficient to prove that father of the plaintiff was tenant of suit property and the suit property was in his possession and after him, plaintiff was in possession of the suit property by succession. According to him, name of petitioner is inserted in the Tenancy Register extract, which is clear to the naked eyes. By relying on deposition of father of the plaintiff, recorded before the Tahsildar on 10/06/1974, he submits that it is admitted by defendant No.1 that the suit property is in possession of the plaintiff's father. Further reliance is placed on decision in Tenancy Case No.14/1974, on the basis of which Mutation Entry No.120 is certified on 30/12/1974, whereby father of plaintiff was declared as tenant of the suit property. According to him, both the Courts have not recorded a finding that defendants are in possession of the suit property. Further submission is that, only because under Section 32(G) of the Bombay Tenancy and Agricultural Lands Act, 1948, price was not fixed, status of the plaintiff as tenant is not taken away. He, therefore, submits that on the date of filing of suit, plaintiff was in possession of the suit property and both the Courts have ignored this voluminous record showing possession of the plaintiff over the suit land and have erred in denying relief to the plaintiff. He submits that though there is no record of possession of defendants, however, by recording perverse findings plaintiff's application for temporary injunction is rejected.

5. On the other hand, learned advocate for respondents supported the impugned orders. He submits that it is not clear from the evidence recorded before the Tahsildar as to in which proceedings the said evidence was recorded. By referring to Page No.56, he submits that Tenancy Case No.14/1974 is shown to be decided by the Tenancy Awal Karkoon, Barshi, which is without jurisdiction. In that, order dated 20/08/1974 is stated to have been passed in Tenancy Case No.14/1974. The same is not placed on record by the plaintiff. Therefore, Mutation Entry No.120 taken on the basis of said order is illegal. He submits that the plaintiff is guilty of suppression of facts as subsequent application filed under Section 32(G) by the plaintiff is not disclosed. The same was withdrawn by him by filing pursis. By relying on 7/12 extract placed on record by him, along with affidavit-in-reply, he submits that there is no entry of tenancy in 7/12 extract till 1974. By relying on revenue record of the suit land, he submits that the plaintiff has failed to prove his possession. He, therefore, submits that both the Courts have recorded concurrent findings of fact which may not be interfered with in exercise of extraordinary writ jurisdiction.

6. Perused the writ petition memo, annexures thereto and the impugned orders.

7. *Prima facie*, on perusal of Mutation Entry No.4939, it

appears that on 01/01/1963, Patil Inam Vatan was abolished as per the Government circular dated 31/12/1963 and the name of Government was inserted. In Mutation Entry No.5598, it is recorded that the Vahivat of Gut No.327 is not by the tenant, therefore, proceedings under Section 32G of the Tenancy Act was disposed of on 01/12/1968. Thus, the suit land was Vatan Inam land on the Tilers Day and provisions of Section 32G were not applicable, as is held in the order dated 08/07/1974, passed by the Tahsildar and Agricultural Land Tribunal, Barshi. This order is not challenged by Sitaram or his legal heirs. As per Mutation Entry No.5141, in terms of order of Mamlatdar dated 01/08/1965, the suit land was regranted to Shevantabai Narayan Patil, minor guardian of Bhagvat Narayan Patil, on depositing occupancy price of Rs.375/- in the Government Treasury. It is mentioned in Mutation Entry No.5141 that the suit land was in possession of the predecessors of defendants. Petitioner has relied on Mutation Entry No.120 which is taken on the basis of order dated 20/08/1974, passed in Tenancy Case No.14/1974, thereby holding father of the petitioner as tenant of the suit property. This order is not placed on record. Therefore, it is not clear as to on what basis Tenancy Awal Karkoon informed Talathi and the Talathi has taken Mutation Entry No.120, on 30/12/1974.

8. Mutation Entry No.3952 dated 31/08/1955 shows that

Shevantabai w/o Narayan Patil had given suit land on lease to Sitaram Keshav Patil on crop sharing basis. In the remark column of the said entry it is mentioned that the said land is Inam land under Clause 6(b) and Tenancy Act is not applicable to same. So also, as entire Survey No.327 is not in the name of Shevantabai, she is not entitled to give the entire land on tenancy basis.

9. On the basis of documents placed on record both the Courts have held that, *prima facie* it appears that defendants are owners of the suit land Gut No.327, since their forefathers and they are in possession of the suit property. Plaintiff or their predecessors have not challenged the order passed by competent authority i.e. Tahsildar and Agricultural Land Tribunal, Barshi. Therefore, plaintiff has *prima facie* failed to prove possession as a tenant and balance of convenience is not in favour of the plaintiff. If the injunction is granted, then true owners will be dispossessed and hardship will be caused to them.

10. Trial Court as well as the appellate Court have recorded concurrent findings of fact and have rejected relief to the petitioner. This Court while exercising writ jurisdiction is not sitting as appellate Court over the orders passed by both the Courts below. Record indicates that petitioner has failed to prove *prima facie* case in his favour. Balance of convenience is not in favour of the

petitioner. No irreparable loss will be caused to the petitioner if interim relief is refused to him.

11. There appears no illegality or perversity in the orders impugned in present petition. Writ petition being devoid of merit is dismissed. Since the suit is of the year 2017, hearing of the suit is expedited.

(NITIN B. SURYAWANSHI, J.)