

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

WRIT PETITION NO.14728 OF 2019

1. Goverdhan s/o Sitaram Patil
Age: 77 years, Occu.: Agriculture,
 2. Ashok Goverdhan Patil
Age: 47 years, Occu.: Agriculture,
 3. Bhagwan Goverdhan Patil
Age: 46 years, Occu.: Agriculture,
All R/o: At Post. Kasbe Tadwale,
Tq. & Dist. Osmanabad.
- ... Petitioners
(Orig. Defendants)

Versus

1. Bhagwat s/o Narayan Patil
Age: 60 years, Occu.: Agriculture,
 2. Arun s/o Bhagwat Patil
Age: 29 years, Occu.: Agriculture,
Both R/o: At Post. Kasbe Tadwale
Tq. & Dist. Osmanabad.
- ... Respondents
(Orig. Plaintiffs)

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Mr. V. D. Salunke, Advocate for Petitioner.
Mr. M. B. Kolpe, Advocate for Respondent Nos.1 & 2.

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CORAM : NITIN B. SURYAWANSHI, J.

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

ORDER :

1. By this petition, petitioners challenge order dated 02/11/2017, passed by learned 4th Joint Civil Judge, Junior Division, Osmanabad, below Exhibit-5 in Regular Civil Suit No.524/2017 and the order dated 13/08/2019, passed by learned District Judge-3, Osmanabad, in Misc. Civil Appeal No.101/2017.

2. Respondents/plaintiffs have filed the suit for injunction in respect of land Gut No.662, ad-measuring 16 H 77 R, situated at village Kasbe Tadvale, Dist. Osmanabad, contending that the suit land is their ancestral property and plaintiffs being owners of the suit land are in possession of the suit land. Along with the suit, application Exhibit-5 is filed for temporary injunction. Petitioners /defendants appeared and opposed the case of plaintiffs. They claim that the suit land is tenanted land and the same is in their possession since their father Sitaram. Plaintiffs filed 7/12 extract and revenue record in support of their claim that they are the owners and are in possession of the suit property. Trial Court allowed the application Exhibit-5 of plaintiffs. Order of the trial Court is unsuccessfully challenged by the defendants/petitioners by filing Misc. Civil Appeal No.101/2017. Being aggrieved by both these decisions, present writ petition is filed.

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

4. Learned advocate for petitioners/defendants strenuously urged that revenue entries showing possession of petitioner No.1 are placed on record and the same were placed before the trial Court to show that since 1955-1956 father of petitioner No.1 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 petitioner No.1 was tenant of the suit property and the suit property was in his possession and after him, petitioner No.1 was in possession of the suit property by succession. According to him, name of petitioner No.1 is inserted in the Tenancy Register extract, which is clear to the naked eyes. By relying on deposition of father of petitioner No.1, recorded before the Tahsildar on 10/06/1974, he submits that it is admitted by plaintiff No.1 that the suit property is in possession of the defendant No.1'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 defendant No.1 was declared as tenant of the suit property. According to him, both the Courts have not recorded a finding that plaintiffs 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 defendants as tenants is not taken away. He, therefore, submits that on the date of filing of suit, defendant No.1 was in possession of the suit property. He, therefore, submits that both the Courts have ignored this voluminous record showing possession of defendants over the suit land and have erred in allowing relief to the plaintiffs. He submits that though there is no

record of possession of plaintiffs, by recording perverse findings plaintiff's application for temporary injunction is allowed.

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 defendants. Therefore, Mutation Entry No.120 taken on the basis of said order is illegal. 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 defendants have failed to prove their possession. He, therefore, submits that both the Courts have recorded concurrent findings of fact and passed the impugned orders, which may not be interfered with in exercise of extraordinary writ jurisdiction.

6. Perused the writ petition memo, annexures thereto, the impugned orders and affidavit-in-reply filed by respondent Nos.1 and 2.

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 plaintiffs. Petitioners have 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 the 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 plaintiffs are owners of the suit land Gut No.327, since their forefathers and they are in possession of the suit property. Defendants or their predecessors have not challenged the order passed by the competent authority i.e. Tahsildar and Agricultural Land Tribunal, Barshi. Therefore, plaintiffs have *prima facie* proved their possession over the suit property and balance of convenience is in favour of the plaintiffs. If the injunction is not granted, then hardship will be caused to them.

10. Trial Court as well as the appellate Court have recorded concurrent findings of fact and have granted interim relief in favour of respondents. This Court while exercising writ jurisdiction is not sitting as appellate Court over the orders passed by both the Courts below. Record indicates that petitioners have failed to prove *prima*

facie case in their favour. Balance of convenience is not in favour of the petitioners. No irreparable loss will be caused to the petitioners if interim relief is granted in favour of respondents.

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.)