

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.13359 OF 2022**

RAOSAHEB ASARAM SHEJUL
VERSUS
M/S SHREE VENTURES AND OTHERS

...

Mr. Yogesh B. Bolkar, Advocate for the Petitioner.

Mr. A. A. Pimpalwadkar, Advocate for Respondent Nos.1 to 3.

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**CORAM : SHARMILA U. DESHMUKH, J.
DATED : 09th JANUARY, 2023.**

PER COURT:-

1. Heard the learned counsel appearing for the petitioner.

2. The petitioner is aggrieved by the order dated 15.09.2022 passed by the Ad-hoc District Judge-2, Aurangabad in Miscellaneous Civil Appeal No.153/2022 upholding the order of the Trial Court dated 26.09.2022, whereby the petitioner's application below Exhibit-5 came to be rejected.

3. The petitioner claims to be cultivating the land jointly with his brother and according to the petitioner the same is reflected in the 7/12 extracts. Learned Trial Court upon a perusal of the 7/12 extracts produced by the petitioner has *prima facie* come to a finding that in the year 2015-16 the name of the elder brother of the petitioner is shown in the 7/12 extracts. The 7/12 extracts shows that, since the year 1959 the subject land was mutated in the name of the grandfather in cultivation column and after the death of the grandfather the name of petitioner's father was entered up to the year 1968-69, which continued till the year 2015 and thereafter, the name of the brother is mentioned in 7/12 extracts in cultivation column. It is not disputed that the

petitioner's father expired in the year 2000. The documentary evidence which has been produced by the petitioner to prove his claim shows that the land was being cultivated by the father and thereafter by the brother. The name of the petitioner does not appear in the 7/12 extracts and hence, it cannot be said that *prima facie* case of cultivation of the land is made out by the petitioner.

4. Learned counsel for the petitioner submits that the affidavits of the adjoining lands owners have been produced, in which it is stated that the subject land is being cultivated jointly by the petitioner and his brother.

5. At this stage the affidavits cannot be considered in as much, as the same will have to be tested during the evidence. The petitioner has not been produced any document to show that he was cultivating the subject land. It is settled that the grant of injunction is in exercise of the discretionary powers and unless it is shown that the discretion exercised is arbitrary, in exercise of writ jurisdiction no interfere is warranted. This Court in exercise of writ jurisdiction under Article 227 of the Constitution of India is not expected to substitute its own view, if the view taken by the Trial Court and the Appellate Court, on the basis of the documents is found to be *prima facie* sustainable.

6. Considering the above, no case for interfere is made out. Writ Petition is accordingly dismissed.

(SHARMILA U. DESHMUKH)
JUDGE

Devendra/January-2023