

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6204 OF 2023

Prakash Sitaram Patil

... Petitioner

V/s.

Ramesh Shankar Patil & Anr.

... Respondents

Mr. Girish R. Agrawal with Ms. Naina P. Boraste for the
petitioner.

Mr. Kalpesh U. Patil for the respondents.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 27, 2023

P.C.:

1. By this writ petition under Article 227 of the Constitution of India, the petitioner/original plaintiff is challenging order passed by the Appellate Court rejecting application for temporary injunction filed by the petitioner.

2. The petitioner filed Regular Civil Suit No.284 of 2022 seeking declaration of ownership of the suit property and consequential injunction not to disturb his possession over the suit property. Gat No.257 ad-measuring 19-Are as described in paragraph 1B of the plaint is the suit property. It is contended that during consolidation scheme, the plaintiff is allotted the suit property. On 8 November 2021, defendant filed an application under Section 138 of the Maharashtra Land Revenue Code, 1966

(“MLRC” for short) for removal of encroachment from .03-Are out of suit property which was allowed. According to the plaintiff, he has cultivated sugarcane crop over the suit property.

3. The Trial Court based on application filed under Section 138 of the MLRC for removal of encroachment over the suit property granted injunction against defendant. The Appellate Court set aside the order of injunction on following three reasons: (i) no evidence produced by the plaintiff to prove his possession over the suit property; (ii) under consolidation scheme, suit property is allotted to the plaintiff; and (iii) the proceedings under Section 138 of the MLRC was restricted to the extent of .03-Are.

4. On perusal of the record, it appears that before the Trial Court no material was produced by the plaintiff to prove his possession. However, in the Appellate Court the plaintiff produced receives issued by the sugar factory and local cooperative society. No case was made out before the Appellate Court to take into consideration said material. However, even after considering the said material, in my opinion, delivery of possession by the authorities under the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 and certificate issued under Section 24 of the said Act stands on a higher footing than the documents produced by the plaintiff. Moreover, the basis of judgment delivered by the Trial Court was order passed by the revenue authorities under Section 138 of the MLRC. Adjudication on the said issue was restricted to the extent of .03-Are of area. The suit property is 19-Are. Mere pendency of an application for correction filed by the plaintiff before the

authorities under the said Act is no ground to discard delivery of possession by the authorities under the provisions of the said Act. Therefore, in my opinion, no interference under Article 227 of the Constitution of India is called for.

5. However, according to the petitioner he has cultivated sugarcane crop in the said land and, therefore, he be allowed to take away said crop. The respondents disputes this position. However, if as of today there is any sugarcane crop standing on the suit property, the plaintiff is permitted to take away said crop after it is ripe for harvesting.

6. With this clarification, the writ petition stands dismissed. No costs.

(AMIT BORKAR, J.)