

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2099 OF 2023

Ramchandra Nathu Jamdade

...Petitioner

Versus

Babasaheb Mahadev Nevse & Ors.

...Respondents

Mr. Drupad S. Patil for the petitioner.

Mr. Rushikesh Patil for respondent Nos. 1 & 2.

Mr. P. P. Pujari, AGP for respondent Nos. 3 to 5.

Coram : Sharmila U. Deshmukh, J.

Date : July 14, 2023.

P. C. :

1. Heard.

2. The challenge in the petition is to the order dated 17th November, 2022 rejecting the petitioner's appeal against the order of refusal of injunction passed by the Trial Court in RCS No. 564 of 2019. For sake of convenience parties are referred by their status before the Trial Court.

3. The case of the Plaintiff is that he is the tenant in respect of land bearing survey No. 697/18 and survey No. 697/17. He would further claim that the property adjacent to these two survey numbers

i.e. survey no. 697/19 admeasuring 8.03-R is in his possession and as such, he claims title by prescription. It is the case of the Plaintiff that previously the Plaintiff had filed the suit for perpetual injunction in the year 2015 in which the Application for temporary injunction was rejected right up to this court and thereafter, the suit came to be withdrawn in the year 2019 and also that the revenue appeals preferred by the Petitioners have also been rejected in the year 2019.

4. Learned counsel appearing for the petitioner submits that the order of the Tahsildar on which the Trial Court as well as the Appellate Court has placed reliance is an order without jurisdiction in much as there was no delegation of power contemplated under section 135 and 138 of Maharashtra Land Revenue Code. He would further submit that the plaintiff seeks title by adverse possession and, as such, there are no documents in his possession to show his title, however the Plaintiff is in settled possession.

5. *Per contra*, learned counsel appearing for the Defendant Nos. 1 and 2 points out that the previous efforts made by the Petitioner to claim injunction against the rightful owners has been rejected and ultimately the suit came to be withdrawn in the year 2019. He would further submit that the owners of the suit property had filed for joint measurement in the year 2014 on the ground of encroachment as the

Plaintiff has attempted to encroach upon the property by demolishing the bundh situated at the west of Sub-division No. 19. He would submit that there is no reason for interference with the concurrent findings of the Trial Court as well as the Appellate Court.

6. Considered the submissions.

7. For a party to claim a relief of temporary injunction in order to protect his possession, it has to be shown that the party is in settled possession. In the present case, admittedly the Plaintiff previously attempted to seek injunctive relief which has been rejected right up to this Court. In the present proceedings there is absolutely no material which has been brought on record to demonstrate that the plaintiff is in possession of the suit land much less in settled possession. On the contrary, the revenue records indicates that the names of Defendant Nos. 1 and 2 as the owners as well as the possessors from the years 1932 to 1999. The plaintiff is seeking to challenge the order of Tahsildar on the ground of jurisdiction. However, in my opinion, at present the issue is about protection of Plaintiff's alleged possession on the property and issue of competency of Tahsildar will be a matter which would have to be considered during the trial.

8. The Appellate Court has rightly considered the order of

Tahsildar and the revenue records evidencing the name of Defendants as owner as well as possessor. Considering that the Plaintiff has himself came with a case that the suit property, since 1946, is standing in name of Defendants and their predecessor, it was required of the Plaintiff to bring on record some material to demonstrate that the plaintiff is in possession of the suit property adverse to the title of the true owners. From the proceedings on record, it appears that no such material has been brought on record and as such the Plaintiff has failed to make out prima facie case.

9. The Appellate Court has rightly considered that by filing this petition the petitioner is restraining the rightful owners from getting the fruit of the order passed by the Tahsildar and, as such, the Defendants are suffering irreparable loss.

10. In light of the above there is no reason to interfere with the concurrent findings of the Trial Court as well as the Appellate Court. The writ petition is devoid of merit stands dismissed.

[Sharmila U. Deshmukh, J.]