



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

WRIT PETITION NO.3408 OF 2023

Bhanudas Laxman Bhosle

..... Petitioner

Vs.

Mustafa Nijam Mulani and Ors.

..... Respondents

Mr. B. K. Raje for the Petitioner.

Mr. R. M. Momin i/b Tooba R. Momin for Respondent Nos.1 and 2.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 17 AUGUST 2023.

P. C.

1. Heard.

2. This petition was heard along with Writ Petition No.3168/2023. This Court has dismissed the Writ Petition No.3168/2023 and upheld the findings of trial Court and the appellate Court rejecting the petitioner's application under Exhibit 5. The respondent in Writ Petition No.3168/2023 is the plaintiff in Regular Civil Suit No.132/2017.

3. Regular Civil Suit No.132/2017 was instituted by the respondent plaintiffs for declaration that the lease deed of the year

1989 be declared as illegal, null and void and for order of perpetual injunction restraining the petitioners from interfering with the possession of the defendant. Respondent has come with a case that lease deed was in fact a security document which has been executed of a sum of Rs.1 lakh which was advanced by the petitioner's father to respondent. It is pleaded that within 2 years thereafter amount has been repaid and as the document was only for the purpose of security, the possession was never parted with. It is further the case that the suit property is being cultivated by respondent and in that respect their names have been mutated in the revenue records. The trial Court as well as the appellate Court on the basis of revenue record have come to a *prima facie* finding that the possession of the suit property is with the petitioner and has allowed application below Exhibit 5.

4. Learned counsel appearing for the petitioner submits that the suit is *exfacie* barred by limitation inasmuch as the same has been filed in the year 2017 seeking declaration that lease deed executed in the year 1989 is illegal and bad in law. He would further submit that the provisions of section 58 of the Limitation Act bars institution of suit for declaration beyond the period of 3

years. He would further contend that the cause of action arose when the amount was repaid within a period of 2 years as claimed and/or thereafter when the petitioner's father expired. Petitioner's father expired in the year 2010 and suit has been filed in the year 2017.

5. *Per contra* learned counsel appearing for the respondent submits that the aspect of possession has been rightly decided in favour of the respondent considering the mutation entries which have come on record. He would further submit that the question of limitation is a mixed question of fact and law and will be considered at the time of trial.

6. Considered the submissions and perused the papers with the assistance of learned counsel for the parties.

7. Regular Civil Suit No.132/2017 has been instituted by the petitioners seeking relief of perpetual injunction restraining the respondents from interfering with the possession. In this proceedings, an application came to be filed under Exhibit 5 seeking temporary orders of injunction. While considering the

application for temporary injunction what is required to be seen is whether any *prima facie* case is made by the petitioners and whether the balance of convenience is in favour of the petitioner. In that context the documentary evidence produced by the petitioner will have to be considered. The petitioner seeks to rely on the lease deed of the year 1989 to contend that while executing the lease deed for a period of 99 years the possession of the suit property was handed over to the father of the petitioner. In that respect as the property was handed over in the year 1989 to the father of the petitioner the least expected is to mutate their names in the revenue records. Since the year 1989 till the year 2017 the property is stated to be in possession of the petitioners. The claim of the petitioners is of longstanding possession since the year 1989, however, there is no document produced on record apart from the lease deed to demonstrate the *de-facto* possession of the petitioner. On the other hand, there is 7/12 extract which shows a noting of "Masjid". No doubt the contention of the petitioner is that apart from noting that there is nothing to show that when the entry was mutated. In my opinion the same will be a matter of trial as to how the entry was mutated. However the revenue records do not show the name of

the petitioner as leasehold owner of the suit property. As regards the application which has been filed with the Tahsildar, the position as on date of application before the trial Court was that the matter was remanded to Talathi. Insofar the invoices as regards the purchase of seeds the same cannot be said to assist the case of the petitioner to prove his longstanding possession. The trial Court as well as the appellate Court has considered the mutation entry which has come on record and has inferred that *prima facie* 7/12 extract reflect that the defendants are in possession of the suit property. In cases where there is no other document, possession usually follows title, however in the present case 7/12 extract which is produced on record *prima facie* show noting of Masjid and as such defendants are shown to be *prima facie* in possession.

8. As regards the contention of learned counsel for the petitioner that the suit in question is barred by law of limitation, in my opinion the same will have to be considered at the time of trial. At the time of adjudicating the Interim Application what is required to be considered is the aspect of possession. It is settled position of law that even if a trespasser is in settled possession, the Court will protect the possession till he is evicted by following due

process of law. In the present case, trial Court as well as the appellate Court on the basis of revenue entries has come to a concurrent findings as regards the respondents being in settled possession.

9. In that view of the matter there is no warrant for interference in exercise of power under Article 227 of the Constitution of India. The petition stands dismissed.

SHARMILA U. DESHMUKH, J.