



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

WRIT PETITION NO.3168 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. The petitioner questions the concurrent findings of the trial Court and the appellate Court rejecting the petitioner's application below Exhibit 5.

3. Regular Civil Suit No.131/2017 was instituted by the petitioner seeking permanent injunction as against the respondents from obstructing the petitioners possession over the suit property. The case of the petitioner in the plaint is that in the year 1989 the petitioner's father acquired the property on leasehold basis by

virtue of lease deed dated 10/5/1989 for a period of 99 years. It was pleaded that after the death of the petitioner's father in the year 2010 the petitioners presented an application for recording the names of the petitioner as heirs of his father late Lakshman Keshav Bhosale when objection was taken by respondent No.1. Suit came to be instituted on 13/7/2017 in which application was filed below Exhibit 5 seeking temporary injunction. The trial Court by order dated 22/9/2017 rejected the application as against which an appeal came to be filed being Misc. Civil Appeal No.131/2018 which also came to be dismissed giving rise to the present petition.

4. Learned counsel appearing for the petitioner submits that there was lease Deed which has been executed in favour of the petitioner's father by respondents for a period of 99 years and the lease premium of Rs.1 lakh was paid. He would further point out the recital in the lease deed that the possession of the property was handed over. He submits that he has produced on record an application filed with Talathi seeking site visit and for entering his name in Form 14 in which Talathi has given a favourable report. He contends that however the Tahsildar considering the entry in

7/12 extract which shows noting of possession of "Masjid" has remanded the matter to the Talathi to consider afresh. He would further submit that trial Court as well as the appellate Court failed to take into consideration the fact that there was no rejection of his application and that the matter was remanded to Talathi. He would further submit that the trial Court as well as the appellate Court has failed to consider that there is valid lease deed executed in favour of the petitioner's father in which there is specific recital of the possession being handed over. He would further point out the invoices which are annexed to the petition as regards the purchase of seeds etc for agricultural produce, which according to him, points out his possession over the suit property.

5. *Per contra* learned counsel for respondents submits that the respondents have filed a separate suit in the year 2017. He would further contend that the 7/12 extract contains an entry of "Masjid" and in the year 1942 the suit property was purchased by the respondents and donated to Masjid. He would further contend that out of income from cultivation of suit land, the respondent as well as Masjid's expenses are met. He would further submit that

lease deed was in fact a loan document and the amount has been repaid.

6. Considered the submissions and perused the records.

7. Regular Civil Suit 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. Considering that jurisdiction of this Court under Article 227 of the Constitution of India is invoked which is not to correct mere error of fact and law, and that there are concurrent findings of the trial Court and the appellate Court, this Court is not inclined to interfere with the concurrent findings. That apart the injunction application has been refused since the year 2017 and appeal is also dismissed in the year 2021. As such there is no warrant for interference with the impugned order.

9. The petition stands dismissed.

SHARMILA U. DESHMUKH, J.