

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

WRIT PETITION NO.7977 OF 2022

1. Smt. Rukmini Shantaram Kadam, ... Petitioners
Aged 73 years, Occ. Household,
2. Smt. Sumitra Pandurang Kadam,
Aged 69 years, Occ. Household,
- 3 Smt. Sulochana Raghunath Kadam,
Aged 66 years, Occ. Household,
Nos.1 to 3 R/o. Bhelsai, Tal. Khed,
Dist. Ratnagiri.

vs.

- 1 Shri Sudhakar Shankar Kadam ... Respondent
aged about 49 years, Occ. Agri &
Service,
R/o. Bhelsai, Tal. Khed,
Dist. Ratnagiri.
At present R/o. A208, Indraprastha,
Radhakrishna Nagar, Bahdurshaikh
Naka,
Chiplun Tal. Chiplu, Dist. Ratnagiri.

Mr. Indrajeet R. Kulkarni a/w Ms. Yogita S. Tembe for
Petitioners.

Mr. S. M. Railkar for Respondent.

CORAM : SANDEEP V. MARNE, J.

DATED : 23 JANUARY, 2023

JUDGMENT :-

1. Rule. Rule made returnable forthwith. With consent of
both the sides, the petition is taken up for final hearing.

2. By this Petition, Petitioners assail judgment and order dated 11 March 2022 passed by the District Judge, Khed in Civil Misc. Appeal No.3 of 2021 by which the District Court has reversed the order passed by the trial Court dated 8 November 2019 and has clamped temporary injunction against Defendant Nos.18, 23 and 30 from causing any obstructions to Defendant No.5 over land at Survey No.423, Hissa No.54 of the village Bhelsai, Tal. Khed, Dist. Ratnagiri.

3. Mr. Kulkarni, the learned advocate appearing for Petitioners would take me through the contents of the Application filed by Defendant No.5 seeking temporary injunction. He would contend that the Application itself contained an admission of possession of property in question by Defendant Nos.18, 23 and 30. He would submit that taking the contents of the Application into consideration, the trial Court had rightly rejected the Application for temporary injunction vide its order dated 8 November 2019. He would further submit that the District Court has however laid unnecessary emphasis on entry in 7/12 extract and has ignored the specific pleading made by Defendant No.5 in the Application seeking temporary injunction.

4. Per contra, Mr. Railkar, the learned advocate appearing for Defendant No.5 would oppose the Petition and support the order passed by the District Judge. He would submit that Defendant No.5 has been issued purchase certificate under the provisions Section 32M of the Bombay Tenancy and Agricultural Lands Act, 1948 on 1 March 1968, which is conclusive proof both of ownership as well as possession of the concerned property by defendant No.5. He would submit that the District Court has rightly appreciated the position that the revenue entries reflect the possession of Defendant No.5 over the concerned land.

5. Having heard the learned counsels for the parties, it is apparent that the Suit is filed by Plaintiffs seeking partition. The controversy before me is between two sets of defendants to the Suit. Defendant No.5 filed Application at Exh.162 seeking temporary injunction against Defendant Nos.18, 23 and 30. Mr. Kulkarni does not disputed maintainability of such an Application. However, what is seriously disputed by him is the finding recorded by the District Court in granting the order of temporary injunction in favour of Defendant No.5.

6. In Application dated 19 July 2019 filed by Defendant No.5 seeking temporary injunction, he specifically averred that Defendant Nos.18, 23 and 30 were cultivating the concerned land by taking crop of rice therein. Thus, it appears to be a specific pleading in the Application itself that the concerned property is being cultivated by Defendant Nos.18, 23 and 30. It is not even the case of Defendant No.5 in his Application that he was cultivating the concerned land and that his possession was disturbed on a particular day by Defendant Nos.18, 23 and 30 by sowing seeds of rice crop. *Prima facie* it appears that Defendant No.5 himself pleaded that the concerned land is being cultivated by Defendant Nos.18, 23 and 30.

7. Defendant No.8, 23 and 30 also demonstrated before the trial Court that Defendant No.5 has been residing at Chiplun Town and rarely visits the village in which the concerned land is located. This position appears to be supported by the address given by Defendant No.5 himself in the Appeal Memo.

8. The District Court has given undue importance to the entries made in the revenue record. Such entries may be relevant for proving ownership. However, Defendant No.5

himself made pleadings contrary to the entries in the revenue record and admitted in his Application that Defendant No.18, 23 and 30 are cultivating the concerned land. In the light of such admission in my view, the District Court ought not to have recorded a finding of possession of Defendant No.5 merely on the basis of entries in the revenue record.

9. The order passed by the District Judge in my view is indefensible. The Writ Petition is accordingly allowed. The judgment and order dated 11 March 2022 passed by the District Judge, Khed in Civil Misc. Appeal No.3 of 2021 is set aside. Rule is made absolute.

(SANDEEP V. MARNE, J.)