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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8317 OF 2022

Vilas Ramchandra Dudhane

.....Petitioner

V/s.

Kashinath Shankar Dudhane

.....Respondent

Mr. Abhishek R. Avachat for the Petitioner.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 10th AUGUST, 2023.

P. C.

1. Registry has not placed the papers of the petition. With consent of learned counsel for the petitioner, a copy of the petition is tendered and the matter is heard.

2. The challenge in the petition is to the order dated 28/3/2022 of the trial Court rejecting the petitioner's application below Exhibit 24 seeking interim injunction in the counter claim filed by the petitioner.

3. Regular Civil Suit No. 157/2015 was instituted by the respondent plaintiff for permanent injunction in which the petitioner-defendant has preferred a counter claim seeking title by prescription. In that proceedings application came to be filed below Exhibit 5 by the plaintiff and Exhibit 24 by the petitioner and the application below Exhibit 24 preferred by the petitioner came to be rejected whereas plaintiff's Exhibit 5 came to be allowed. As against which Miscellaneous Civil Appeal No.49/2020 was preferred, which came to be dismissed, giving rise to the present petition.

4. Heard Mr. Abhishek R. Avachat for the petitioner.

5. Learned counsel appearing for the petitioner submits that the petitioner was pleading title by adverse possession. He would further submit that the only reason for which injunction has been declined by the trial Court is that boundary of the land which the petitioner claimed to be in possession is incorrect. He would further submit that the appellate Court has erroneously upheld the findings of the trial Court. He further submits that on the basis of panchanama which was carried out by Tahsildar, the application seeking

mutation in 7/12 extract was filed.

6. Considered the submission and perused the papers.

7. The petitioner has come with a case of adverse possession in respect of 10R land out of Gat No.32. The area of Gat No.32 is 54.1 R land out of which an area of 10R is pleaded by way of adverse possession. Perusal of the order of trial Court indicates that the petitioner has not been able to identify the exact location of 10R land. The boundaries which are given by the petitioner in his counter claim in respect of 10R land is same as that of entire Gat No.32. It was expected that the correct boundaries would reflect the lands of other owners of remaining portion of Gat No.32. However that does not appear to be so. In the absence of identification of the property in possession of the petitioner, an injunction cannot follow. As regards the claim of adverse possession appellate Court in paragraph No.16 has noted that during inquiry before Tahsildar the case of the defendant was that he has purchased 10R land from the plaintiff. In the counterclaim, the claim is adverse possession whereas in the inquiry before Tahsildar, defendant has put forward claim of purchase of

the properties. Perusal of orders of the trial Court as well as the Appellate Court do not demonstrate that any document has been produced by the petitioner to show his possession of 10R land. The claim of the petitioner is that of adverse possession and best document available would be Form 14 which would show that 10R land being in occupation of the petitioner as the same would reflect name of the occupant other than the owner. However in the present case no such document has been produced to show possession. Learned counsel for the petitioner places reliance on the decision of the Apex Court in the case of *Rame Gowda (D) by LRS v. M. Varadappa Naidu (D) by LRs, AIR 2004 Supreme Court 4609*. There is no quarrel as to the proposition of law set out in the decision of the Apex Court. In the present case the petitioner has not been able to demonstrate that he is in possession of 10R land.

8. In view of the above there is no infirmity in the findings of the trial Court and Appellate Court. The petition being devoid of merits stands dismissed.

9. Needless to clarify that the observations made hereunder are

prima facie for the purpose of deciding the validity of the impugned order. The trial Court to adjudicate the matter on its own merits and uninfluenced by the observations made hereinabove.

[SHARMILA U. DESHMUKH, J.]