

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

WRIT PETITION NO.11817 OF 2016

Ramakant Atmaram Rawool & Ors. Petitioners

Vs.

Arun Dhondi Gavade & Ors. Respondents

Mr. Sanskar Marathe for the Petitioners.

Mr. Milind Parab i/b Milind Parab & Associates for Respondent
Nos.1 and 2.

Mr. S. D. Rayrikar, AGP for Respondent Nos.3 and 4.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 27th JUNE 2023.

P. C.

1. Heard.

2. The challenge in the petition is to the order dated 15/6/2016 passed in Misc. Civil Appeal No.39/2014 reversing the order of the trial Court below Exhibit '6' in Regular Civil Suit No.11/2014 filed by the petitioner seeking relief of permanent injunction restraining the defendant-Respondent Nos.1 and 2 from causing obstruction to their peaceful possession in the suit property. For the sake of convenience, the parties are referred by their original status before the trial Court.

3. In the suit seeking permanent injunction, the application below Exhibit 6 came to be filed seeking relief of temporary injunction which was allowed by the trial Court by taking into consideration mutation entry 1254 as well as cultivation column of the suit property. The appellate Court reversed the findings of the trial Court on the basis that the foundation of the claim which is gift Deed is not legal and correct and as such subsequent revenue entries loses its value.

4. Heard Mr. Sanskar Marathe for the petitioners, Mr. Milind Parab for respondent Nos.1 and 2 and Mr. S. D. Rayrikar, AGP for respondent Nos.3 and 4.

5. Learned counsel for the petitioners have pointed out that for the purpose of grant of injunction what is necessary to be considered is the settled possession. He would further contend that it would be a matter of trial, as to whether the gift Deed on the basis of which claim is made to the suit property was illegal or improper. He would further submit that the trial Court on the basis of revenue record i.e. mutation entries as well as cultivation column

has rightly come to finding of continuous possession by the plaintiffs since 1961-1962. He would urge that the appellate Court erred in not considering the settled possession by going into the issue of title. In support of his submission, he has placed reliance upon the decision of the Apex Court in the case of *M. Kallappa Setty v. M. V. Lakshminarayana Rao*, AIR 1972 Supreme Court 2299 and *Chief Conservator of Forests v. Collector and Ors.*, AIR 2003 Supreme Court 1805.

6. *Per contra* learned counsel appearing for the respondent contend that the learned Tahsildar *vide* order dated 21/1/2000 has cancelled the mutation entry No.1254 as well as mutation entry No.14 as regard legal heir and it was directed that the situation prior to 25/11/1961 should be restored in the revenue record. He would further submit that the Appeal against the said order before the Additional Collector was also rejected and there is no further appeal. He would support the finding of the appellate Court and would submit that as the foundation i.e. gift Deed itself is not legal and the mutation entry having been cancelled, the order of trial Court was rightly reversed by the

appellate Court.

7. Considered the submission of the parties.

8. The suit in question was instituted seeking orders restraining defendant Nos.1 and 2 from causing obstruction to the peaceful possession of the suit property. At the interim stage, what is required to be considered is the issue of possession. It is only if the party is in settled possession that the interim relief protecting the possession ought to be granted. The purpose of the interim relief is to protect the status quo ante. As such it is required to be seen whether the petitioners have made out a *prima facie* case of possession. In that respect the learned counsel for the petitioners has rightly pointed out the mutation entry 1254 which is at page 18. No doubt, by the order dated 22/1/2000 the mutation entry has been reversed. However, it is not demonstrated to this Court that upon cancellation of mutation entry the possession has been handed over by the petitioners to the villagers. The documents which are on record at Exhibit C from page No.21 shows name of the petitioner in the revenue record. The issue of possession can be

said to have been *prima facie* established from the record which is cultivation column of the suit property which shows that the plaintiff and the predecessor in title were in continuous possession from 1961-1962 and cultivating the crop.

9. Perusal of the order of the appellate Court indicates that the finding is that property belong to the State Government and land initially being recorded in the name of Kabulayatdar Gavkar, the gift deed could not have been executed. The said issue will require evidence to be led and at the interim stage, *prima facie* possession has to be established. Apart from the fact that the revenue entry of the land was initially recorded in the name of Kabulayatdar Gavkar and subsequently mutation entry No.1254 was cancelled by the learned Tahsildar, there is no material which has been brought on record to show that the villagers were in possession of the suit property. On the other hand, the plaintiff has produced mutation entry and the cultivation column which reflects the name of the petitioner and *prima facie* establishes that he was cultivating the property. Apart from the *prima facie* case, the balance of convenience and the issue of irreparable loss will also

have to be considered. The plaintiffs have come with a case that there is obstruction at the hands of defendant Nos.1 to 2 to peaceful possession to the property. Considering that the suit land is *prima facie* shown to be under cultivation by the plaintiff and his predecessor in title since 1961, in my opinion the balance of convenience is in favour of the petitioner and irreparable loss will be caused at the interim stage, if injunction as sought is refused.

10. In that view of the matter the impugned order dated 15/6/2016 cannot be sustained and is hereby quashed and set aside. In view of setting aside of the order of the appellate Court dated 15/6/2016, the order passed by learned Civil Judge, Senior Division dated 17/7/2014 stands restored to file.

11. The Writ petition is allowed.

12. Considering that the claim is that land in question is a government land and villagers have their rights, in my opinion it would be in the interest of justice to expedite the hearing of the suit. Trial Court is requested to hear the suit expeditiously and in

any event within a period of one year from today.

13. Needless to state that the observations made hereinabove are only for the purpose of invalidating the impugned order and trial Court is directed to decide the trial on its own merits uninfluenced by the observations made hereinabove.

SHARMILA U. DESHMUKH, J.