

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 4306 OF 2019

Suryabhan Rambhau Katare and ors __ Vs. __ Sandip Sudhakar Garole

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. M.V.Joshi, Advocate for petitioner
Mr. A.R.Rishi, Advocate for Respondent

CORAM : AVINASH G. GHAROTE, J.
DATE : 09/03/2023

1] Mr. Joshi, learned counsel for the petitioner seeks leave to add Amol Daulat Katare as the petitioner No.5.

2] Leave is granted. The amendment be carried out forthwith.

3] Heard Mr. Joshi, learned counsel for the petitioner and Mr. Rishi, learned counsel for the respondent.

4] The petition challenges the order below Exh.5, dated 20.12.2018 (pg.41) whereby the same came to be allowed in favour of the plaintiff. Appeal there against has been dismissed by the learned Appellate Court by the judgment dated 25.4.2019 (pg.49).

5] Mr. Joshi, learned counsel for the petitioner submits that the original owner of the property, namely Smt. Vijaya Deshpande, had inducted the petitioner no.1 as a tenant in respect of land of Gat No. 339, admeasuring 1.44 H.R, out of the total land of 2.83 H.R, as a result of which the petitioner no.1 was in cultivating possession of the same. The respondent had purchased the entire land from the original owner Smt. Vijaya Deshpadne by sale deed dated 3.3.2018 and claims to be in cultivating possession of the entire land.

6] It is contended that the 7/12 extract for the year 1988 till 2010 indicates the cultivating possession of petitioner no.1 and merely because the 7/12 extract for the subsequent years do not so indicate, would not mean that the petitioner No.1 had lost the possession. It is therefore submitted that the impugned order and judgment are liable to be quashed and set aside.

7] Mr. Rishi, learned counsel for the respondent supports the impugned order/judgment and contends that it is the respondent who is in cultivating possession of the property in question since the date of the sale in favour of the respondent.

8] Though the 7/12 extract indicates the possession of the petitioner No.1 from 1988 till 2010 and thereafter till 2014, there is nothing on record that such cultivating possession continued even thereafter for the subsequent years. So also even though a plea is raised of the original owner Smt. Vijaya Deshpande having inducted the petitioner no.1 as a tenant, there is no document placed on record to indicate such relationship. This plea of tenancy is also not borne out from any of the 7/12 extracts which would indicate that the cultivation by the petitioner No.1 would only have been for and on behalf of the original owner Smt. Vijaya Deshpande, otherwise the 7/12 extracts or the other revenue records could have spelt out a different position altogether, which is not so. Both the Courts below have therefore rightly considered the position on record. The reliance placed upon the order of the Tahsildar dated 9.7.1993 has been rightly considered as unreliable by the learned Appellate Court by recording the reason that even the original owner of the property Smt. Vijaya Deshpande was not made a party to those proceedings, in absence of which the order would clearly be rendered *non est* and neither binding

upon the original owner Smt. Vijaya Deshpande nor the respondent who is claiming through her.

8] I therefore do not see any reason to interfere in the impugned judgment and order passed by the Courts below. The petition is dismissed. No costs.

JUDGE

Rvjalit