

VRJ

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

WRIT PETITION NO.9299 OF 2024

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Abdul Babasai Desai & Ors.

... Petitioners

V/s.

Arjun Bapuso Todkar & Ors.

... Respondents

Mr. Satish S. Raut for the petitioners.

Mr. Pradeep Dalvi with Ms. Priya Dalvi for the respondents.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 13, 2024

P.C.:

1. Challenge in this writ petition is to the concurrent orders passed by the Courts below restraining petitioners from disturbing the respondents' possession over the suit property, which is an agricultural land bearing Gat No.571, admeasuring 1 hectare 11 ares.

2. According to the respondents/plaintiffs, based on the provisions of the Maharashtra Resettlement of Project Displaced Persons Act, 1999, the suit property was acquired, as according to the authorities under the Act, the owner of the land owned land in excess of ceiling prescribed under the Act. According to the respondents, the suit property was acquired. Possession of the suit property was delivered in favour of the respondents' predecessor-in-title. The predecessor-in-title, by registered sale deed dated 30 September 2022, sold the suit property in favour of the

respondents, which contains a recital that the predecessor had delivered possession of the suit property in favour of the respondents. Based on the possession receipt (Kabjepatti) and the conveyance containing recital of delivery of possession, the respondents filed Regular Civil Suit No.185 of 2023. The Trial Court and the Appellate Court, based on possession receipt and the recital in the sale deed, recorded a prima facie finding that the plaintiffs (respondents) have proved possession over the suit property.

3. According to the petitioners, the possession receipt contains a recital that the land in relation to which possession was delivered is uncultivated (Pad) and, therefore, the possession receipt is hollow. According to learned advocate for the petitioners, the petitioners being co-sharers, no injunction can be granted against co-sharers as the entire Gat No.571, admeasures about 10 hectares 25 ares. The learned advocate for the petitioners further submitted that by relying on such possession receipt, the petitioners are being dispossessed.

4. Per contra it is contended on behalf of the respondents that the recital in registered instrument along with statutory document executed by the authorities under the provisions of the Maharashtra Resettlement of Project Displaced Persons Act, 1999, raises a presumption of delivery of possession which at the stage of deciding interim application is sufficient to prima facie indicate respondents' possession over the suit property.

5. Having heard the learned advocates for the parties, in my

opinion, the concurrent findings of fact recorded by the Courts below is based on admissible relevant material. At this stage, the reliability or veracity of document like possession receipt (Kabjepatti) need not be gone into as it is for the Trial Court while deciding the suit to adjudicate upon the veracity and authenticity of possession receipt.

6. Moreover, the description of the suit property mentioned in the possession receipt tallies with the description of property in the sale deed and in the plaint. Therefore, in my opinion, the prima facie finding of fact recorded by the Courts below cannot be said to be suffering from perversity as it is based on some relevant evidence. Sufficiency of evidence to arrive at finding of fact is beyond purview of writ petition under Article 227 of the Constitution of India. Therefore, in my opinion, end of justice will be met if the Trial Court is directed to decide suit within six months from today.

7. Hence, following order:

- a) The writ petition is disposed of.
- b) The Trial Court shall decide the suit on its own merits uninfluenced by the observations made in the impugned orders or by this Court.
- c) The Trial Court shall endeavour to decide the suit within six months from today.

8. No order as to costs.

(AMIT BORKAR, J.)