

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5262 OF 2024

Popat Uma Sandhor

.. Petitioner

Versus

Sadashiv Bhau Chavhan (since deceased through
his legal heirs) Chandrakant Sadashiv Chavhan
and Ors.

.. Respondents

-
- Mr. N. V. Walawalkar, Senior Advocate i./by Mr. Vikram N. Walawalkar, Advocate for Petitioner.
-

CORAM : MILIND N. JADHAV, J.

DATE : APRIL 16, 2024

P.C.:

- 1.** Mentioned out of turn.
- 2.** Heard Mr. Walawalkar, learned Senior Advocate for Petitioner.
- 3.** The present Writ Petition impugns twin orders dated 28.07.2023 passed by the learned Trial Court in Application filed below Exhibit-45 in Regular Civil Suit No.162 of 2022 which is at Exhibit-H, page No.76 to the Writ Petition and further judgment dated 17.02.2024 passed by the learned District Court in Miscellaneous Civil Appeal No.46 of 2023 which are in Application filed seeking injunction and restrain on the Defendants.
- 4.** Mr. Walawalkar has drawn my attention to the aforesaid twin orders and would contend that admittedly Plaintiff's predecessor-

in-title has been shown to be holder and occupant of suit land since 1995 – 1996 and even before that and has drawn my attention to page No.29 of the Writ Petition which is the revenue extract of the suit land.

5. He would contend that being successor-in-title, the Plaintiff is cultivating the suit land and though the suit was filed in the year 2022 for seeking declaration and injunction against the Defendants, subsequent to filing of the suit, in view of the possession of the Plaintiff being threatened to be disturbed by the Defendants, the Plaintiff filed Application below Exhibit-45.

6. He would submit that both the twin orders reject the case of Plaintiff, *albeit*, on the ground which he would like to agitate on the basis of documentary evidence which is appended to the suit plaint as also to the present Writ Petition. He would submit that the theory of possession as delineated and decided by learned Courts below on *prima facie* case in the impugned orders cannot be contrary to the fact that the Plaintiff being the successor-in-title of Uma Khandu Sandhbor is in physical possession of the suit land and is also incidentally cultivating the same.

7. He would contend that there are substantial crops which are being cultivated and harvested by the Plaintiff on the suit land. If that be so then the assessment of the said crops on suit land and any bills and invoices pertaining thereto shall be produced by the Plaintiff to

justify the Plaintiff's occupation and possession of the suit land. Undoubtedly, in such a case, I require to hear the Respondents in the present case. In view of the above, issue notice to the Defendants i.e. Respondents herein.

8. Issue notice to the Respondents. Humdast permitted. In addition to Court's notice, Petitioner is directed to serve the Respondents a copy of this order and copy of the Writ Petition and inform them about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof. Respondents are directed to file Affidavit-in-Reply to the Writ Petition on or before the next date if so desired.

9. In addition to the above, Mr. Walawalkar would submit that he would like to place certain relevant pleadings on record which are inadvertently not appended to the Writ Petition since it was filed in a hurry. Leave to file additional pleadings on record is granted on additional Affidavit.

10. Stand over to **30th April, 2024.**

H. H. SAWANT

Digitally signed
by HARSHADA
HANUMANT
SAWANT
Date:
2024.04.16
19:24:16
+0530

[MILIND N. JADHAV, J.]