

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8896 OF 2024

Kaka Sadhu Jadhav and Ors.

Petitioners (Orig.
.. Plaintiff Nos.1 to 3)

Versus

Kundlik Sadashiv Yadav and Ors.

.. Respondents

WITH

WRIT PETITION NO. 8919 OF 2024

Dilip Shankar Bansode and Ors.

Petitioners (Orig.
.. Plaintiff Nos.1 to 4)

Versus

Kundlik Sadashiv Yadav and Ors.

.. Respondents

-
- Mr. Vishwanath Talkute a/w. Mr. Rohan Bhagat, Advocates for Petitioners.
 - Mr. R.V. Govilkar, Senior Advocate a/w. Ms. Ujwala Sawant, Advocate for Respondent No.1.
 - Mr. P.G. Sawant, AGP for Respondent No.16 – State in WP No.8896 of 2024 and Respondent No.14 – State in WP No.8919 of 2024.
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CORAM : MILIND N. JADHAV, J.

DATE : JUNE 27, 2024.

P.C.:

1. Heard Mr. Talkute, learned Advocate for Petitioners; Mr. Govilkar, learned Senior Advocate for Respondent No.1 and Mr. Sawant, learned AGP for Respondent No.16 – State in Writ Petition No.8896 of 2024 and Respondent No.14 – State in Writ Petition No.8919 of 2024.

2. By virtue of the impugned order dated 31.05.2024 passed by

the learned District Court in Misc. Civil Appeal the order dated 10.02.2023 passed below “Exhibit-5” is upset which was in favour of the Petitioner – Plaintiff.

3. There is a precursor and history to the rights of the parties which is borne out from the pleadings. Though the present Suits are filed in the year 2018, precursor to the Plaintiffs’ right and entitlement in the Suit lands go back to an order of allotment made in favour of Plaintiffs’ under the provisions of Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (for short “**the said Act**”) passed on 10.06.1970. Fact in Writ Petition No.8896 of 2024 are heard and considered. Both Advocates inform that facts in the companion Petition i.e. Writ Petition No.8919 of 2024 are identical.

4. Mr. Talkute has drawn my attention to the order dated 10.06.1970 appended at page No.23 in Writ Petition No.8896 of 2024 and on perusal of the said order it is seen that it pertains to the Suit land but the area of the Suit land as stated therein is 13 acres and 30 gunthas and as such differs. On 10.06.1970 possession receipt has also been issued in favour of the Plaintiffs in respect of 13 acres and 22 gunthas.

4.1. He has next drawn my attention to the mutation entry in the Revenue Record appended at page No.29 to the Writ Petition No.8896 of 2024 and would submit that appropriate mutation entry was carried

out in the Revenue Record. However, that mutation entry does not bear any date but the fact that such mutation entry was indeed carried out is clear. He would submit that since 1970 Plaintiffs / Plaintiffs' are in physical possession of the said Suit land. He would submit that only in 2006, Defendants filed RTS Appeal to challenge the long standing mutation entry effected vide possession letter dated 10.06.1970 in respect of the suit land standing in the name of Plaintiffs without filing Application seeking condonation of delay. He would submit that the Sub-Divisional Officer (for short '**SDO**') allowed the Appeal by order dated 27.07.2007 and set aside the mutation entry. In Appeal, the order of SDO was upset by the Collector on 23.01.2009. However thereafter the order of the Collector was set aside by the Commissioner on 18.11.2013, resultantly compelling the Writ Petitioners to approach this Court in Writ Petition No.11341 of 2013. Order dated 01.04.2014 passed in Writ Petition is appended at page No.40 to the Petition. It dismisses the Writ Petition while holding that the remedy available to the Writ Petitioners – Plaintiffs would lie before the appropriate Civil Court.

4.2. In view of this, Plaintiffs filed the present Suit being RCS No.364 of 2018 which is the subject matter of Writ Petition No.8896 of 2024. Identical Suit was filed in the companion matter also. Writ Petitioners have described the suit property in the Suit plaint admeasuring 4 acres and 47 gunthas alongwith pot kharaba land of

1.01 gunthas. The total of the Suit property however is incorrectly mentioned in the Suit plaint.

5. Exhibit “5” Application was preferred by Petitioners on the premise that Plaintiffs at the time of filing the Suits were in possession of the Suit properties. That Exhibit “5” Application was resisted and contested by Defendants, but by a reasoned order dated 10.02.2023 it came to be allowed and injunction was granted in favour of Plaintiffs.

6. Before I proceed further, I need to state here that Plaintiffs had in fact filed the Suit bearing RCS No.250 of 2014 pursuant to order dated 04.12.2013, but it was later on withdrawn with specific liberty granted to the Plaintiffs to file a fresh Suit as the Plaintiffs had not impleaded the State Government as party to the Suit proceedings in view of the reliefs prayed for by them in the Suit proceedings. Plaintiffs had sought a declaration on the basis of the allotment order dated 10.06.1970 issued by the State and the State Government was not made a party, the Suit was allowed to be withdrawn and liberty was given to Plaintiffs to file a fresh Suit.

7. Mr. Talkute, learned Advocate while drawing my attention to the Exhibit “5” order of the Trial Court would submit that on the aspect of possession, the Trial Court in paragraph Nos.31, 36, 41, 42 and 43 of the said order has returned substantial findings in favour of Plaintiffs. I have perused the same. The said findings returned by the

learned Trial Court are on the basis of the documentary evidence produced before the Trial Court in the form of original order of allotment issued on 10.06.1970 in respect of the Suit land, the possession receipt dated 10.06.1970 and the mutation entry which were placed on record. However, in MCA, the aforesaid order passed below Exhibit “5” has been upset by reappreciating the same evidence.

8. On perusal of the MCA order, it is seen that the learned Trial Court has considered certain documentary evidence as noted in paragraph No.11. The said documentary evidence is not annexed to the Writ Petition for consideration of this Court. Hence, merely on the basis of narration in the MCA order, I cannot appreciate the MCA order and come to any conclusion.

9. Only the documents which are considered by the learned Trial Court while passing the Exhibit “5” order on the issue of possession and as delineated hereinabove have been placed on record by Petitioners.

10. Mr. Govilkar, learned Senior Advocate appears for the Defendants. He would submit that the District Court while passing the order in Misc. Civil Appeal has considered the documentary evidence independently and individually one by one and has commented on the same in paragraph Nos.13 to paragraph Nos.16 of the said order. With the able assistance of both the learned Advocates, I have perused the

said paragraphs in the MCA order. On perusal of the said paragraphs, *prima facie*, I have come to the conclusion that the documentary evidence which is reflected in paragraph Nos.13 to 16 is not placed for my consideration which is upheld by the District Court to upset the order passed by the learned Trial Court.

11. Mr. Talkute would submit that the documents considered by the District Court are the very documents which the Plaintiff has placed on record. However, this submission is refuted by Mr. Govilkar. Though he would like me to read the narration in the MCA order, I am not accepting the same unless it is substantial so as to know the reasons for upsetting the Trial Court's Exhibit "5" order. Resultantly, I have called upon Mr. Govilkar, learned Senior Advocate for Respondent No.1 to place the same on record by filing an appropriate Affidavit. I have also called upon him and also find that on record though substantive findings are returned in paragraph Nos.16 and 17 of the order passed in MCA, the only consideration which has weighed with the District Court is cancellation of the order passed by the Competent Authority under the said Act. One such an order is appended at Exhibit "D" – page No.31 to Writ Petition No.8896 of 2024 and on reading of the said order, it is seen that it concerns Mutation Entry No.941 dated 19.10.1970 which does not pertain to the Writ Petitioners before me in Writ Petition No.8896 of 2024. Mutation entry before me is nomenclatured as Mutation Entry No.939.

Hence, Defendants will have to show the documentary evidence pertaining to Mutation No.939 which has been considered by the learned District Court in paragraph No.16 and only then the findings returned by the District Court can be appreciated by this Court. That apart, there is one more aspect which needs to be seen while passing the interim order. Admittedly there is a long standing mutation entry in the name of the Plaintiffs since 1970 alongwith possession receipt and allotment order. This long standing entry under the Maharashtra Land Revenue Code, 1966 creates a presumption of possession in favour of the Plaintiffs.

12. Advocate for the Writ Petitioners are directed to serve copy of this order and Writ Petition on all unserved Respondents / unrepresented Respondents including the State by any permissible mode of service and file appropriate Affidavit of service with tangible proof thereof on or before the next date. Humdast permitted.

13. Unrepresented Respondents are directed to remain present in Court on the next adjourned date either by themselves or through Advocate.

14. Mr. Govilkar, learned Senior Advocate for Respondent No.1 is directed to file his Affidavit-in-Reply within a period of two weeks from today and place on record the relevant documentary evidence in his favour.

15. Learned Advocate for Petitioners are permitted to file their Affidavit-in-Rejoinder, if any, within two weeks thereafter.

16. In the meanwhile, considering the reasoned order passed below Exhibit “5” on 10.02.2023 and the same being prevailing unfit it was upset by the learned District Court in MCA on 31.05.2024 and in view of my above observations and *prima facie* findings, the order dated 31.05.2024 is stayed.

17. Needless to state that Respondents will be heard by this Court after they file their Affidavit-in-Reply as directed by this Court in both the Petitions. This order shall also apply to Writ Petition No.8919 of 2024. The impugned order of the District Court in Writ Petition No.8919 of 2024 is also stayed.

18. Stand over to **26th July, 2024**. To be placed alongwith Writ Petition No.8919 of 2024.

[MILIND N. JADHAV, J.]

Ajay

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AJAY TRAMBAK
UGALMUGALE
Date: 2024.06.28
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