



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6860 OF 2024

Baliram Khubaji Pawar
VERSUS
Sugriv Shankar Pawar And Others

Mr. S. S. Shinde, Advocate for Petitioner
Mr. A. A. Phad, Advocate for Respondent Nos. 7 to 9

CORAM : R. M. JOSHI, J.
DATE : 16th April, 2025

PER COURT :-

1. By consent of both sides, heard finally at the stage of admission.
2. This petition takes exception to the order dated 19.01.2024 passed below Exhibit 5 in Regular Civil Appeal No. 30/2023 rejecting the prayer made by the appellant/original plaintiff for temporary injunction in respect of the suit property.
3. Petitioner is plaintiff in Regular Civil Suit No. 45/2014. The said suit came to be filed for seeking permanent injunction against respondents in respect of Survey No. 223 situated at Parli Vaijnath. It is a case of the plaintiff that in favour of executor of lease dated 20.01.2004, agreement to sale was executed by the owner of the land. On the basis of this document, it is claimed that the plaintiff is in possession of the suit property. Suit was dismissed by judgment dated 06.05.2023. Against the dismissal of the said suit, petitioner

preferred Regular Civil Appeal Bearing No. 30/2023. During the pendency of the appeal Application Exhibit 5 came to be filed for seeking temporary injunction against respondents. Since the said application is turn down, this petition.

4. Learned counsel for petitioner submits that documentary evidence in the form of lease deed dated 20.01.2004 so also 7/12 extract in respect of suit land indicating the name of the petitioner in the cultivation column. It is his submission that on the basis of this document, the possession of the plaintiff over the suit land is claimed and proved. Hence, according to him, Appellate Court has committed error in rejecting the Application Exhibit 5 by ignoring the said evidence.

5. Learned counsel for respondents-original defendants supported the impugned order by contending that the Trial Court has discarded the evidence of 7/12 extract with specific observations that the plaintiff in collusion with Tahsildar got his name mutated illegally in the Cultivation Column of the suit property. It is his submission that unless these findings are set aside, it is not open for the Appellate Court to record any prima facie contrary findings. It is his submission that the alleged lease deed has not been proved before the Trial Court and in any case, the same has not been executed by the owner of the land.

6. There is no dispute about the fact that the Trial Court has dismissed the suit after hearing both sides and giving opportunity to lead evidence. There are specific findings recorded by the Trial Court about there being no proof of lease deed so also collusion between Tahsildar and the plaintiff in order to mutate his name in the 7/12 extract in cultivation column. This Court finds substance in the contention of the learned counsel for the petitioner that unless the First Appellate Court reverses the said findings, it is not open for the Appellate Court to record any findings at this stage contrary to the findings recorded by the Trial Court, while deciding the application for temporary injunction.

7. Learned First Appellate Court has rightly taken into consider the fact that the document on the basis of which plaintiff claims possession has not been proved before the Trial Court. In view of the observations of the Trial Court with regard to revenue record, the same is not reliable. As a result of this, no fault can be found with the dismissal of Exhibit 5 by the First Appellate Court.

8. Hence, petition stands dismissed.

(R. M. JOSHI, J.)

bsj