



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

WRIT PETITION NO. 5091 OF 2022

Shantabai Pratap Patil

VERSUS

Dilip Deoram Patil

Mr. V. B. Patil, Advocate for Petitioner

Mr. Y. A. Jadhav, Advocate for Respondent

CORAM : R. M. JOSHI, J.

DATE : 16th April, 2025

PER COURT :-

1. This petition takes exception to the order passed by the District Court in Misc. Civil Appeal No. 38/2021 whereby the order passed by the Trial Court below Exhibit 5 in Regular Civil Suit No. 138/2021 came to be set aside and Exhibit 5 was dismissed.

2. Petitioner-plaintiff filed suit for declaration and injunction. It is a case of the plaintiff that the plaintiff has received the possession of the suit land in the year 2005 and the same is reflected in Mutation Entry no. 2045. It is her contention that defendant/respondent herein are causing interference into the possession of suit property and hence injunction is sought. Suit is resisted by the defendant by filing written statement. Counter claim is also filed

seeking declaration that Mutation Entry No. 2045 to be not binding upon him. Injunction application was also filed seeking relief against the plaintiff.

3. In the light of these facts, Application Exhibit 5 came to be allowed by the Trial Court by order dated 26.10.2021. Trial Court has restrained defendant from disturbing the possession of the suit property by the plaintiff. This order came to be taken exception in Misc. Civil Appeal No. 38/2021 successfully. Hence, this petition.

4. Learned counsel for the petitioner has drawn attention of the Court to the finding recorded by the Trial Court as well as the Appellate Court indicating that plaintiff is in possession of the suit land. It is his submission that once the said finding is recorded, it is not open for defendant to cause interference in the possession of the plaintiff over the suit land. To support his submissions, he placed reliance on the Mutation Entry No. 2045 which according to him indicates that defendant has handed over the possession of the suit land to the plaintiff. This contention was opposed by the learned counsel for respondent.

5. Learned counsel for the respondent supported the impugned order. According to him, there is no reason for the suit land to be handed over to

plaintiff. It is contention of the learned counsel for respondent that no appeal would have been filed against mere findings. It is his submission by relying on the judgment of Hon'ble Supreme Court in case of **Smt. Ganga Bai vs. Vijay Kumar and others (1974) 2 Supreme Court Cases 393** that no appeal is maintainable against findings. A specific query is made to learned counsel for respondent as to whether at least in this petition, he has taken exception to the findings recorded by the Appellate Court against him. A candid answer thereto is in negative. On these amongst other submissions, impugned order is supported.

6. It is clear that the findings of the First Appellate Court while passing order in Civil Appeal No. 38/2021 with regard to the plaintiff being in possession of the suit land has gone unchallenged. Once, there is evidence to indicate that the plaintiff is in possession of the suit land atleast from 2005 till the passing of the order by Appellate Court on 27.04.2022, prima facie she is in settled possession of the suit land. The person is settled long possession of the immovable property cannot be evicted except due process of law. Nor it would be permissible for the defendant to cause interference in the said possession of plaintiff.

7. The opposition of the defendants to the interim relief so also not

pursuing the Application 17 filed by them before the Trial Court indicate fact that there is no dispute about the possession of the plaintiff over the suit land. The issue as to the right of the plaintiff over the suit land would be the subject matter of the final decision of the suit. Suffice it to say that once case is made out by the plaintiff about settled possession over the suit land, and when it was found that defendant is interested in obstructing the same, the Trial Court was perfectly justified in allowing Application Exhibit 5. Interference caused by District Court in Misc. Civil Appeal is erroneous since contrary to the fact situation and position of law. More particularly, when a finding of fact is recorded that the plaintiff is in possession of the suit land which is supported by the document that the said possession is from year 2005, there was no reason/justification for Appellate Court to cause interference in the order passed by Trial Court.

8. In view of above discussion, impugned order cannot sustain. Hence, petition stands allowed. Impugned order set aside. Order passed below Exhibit 5 stands restored.

(R. M. JOSHI, J.)

bsj