



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Writ Petition No. 10477 of 2023

1. Dileep s/o.Vitthal Gaikwad,
Age : 35 years, Occu.Agriculture,

2. Babasaheb Bapurao Pitale,
Age : 50 years, Occu.Agriculture,

3. Suresh s/o. Babsaheb Pitale
Age : 23 years, Occu.Agriculture,

All are R/o.Khalapuri,
Tq.Ghansawangi,Dist.Jalna.

...Petitioners

Versus

Bhaurao s/o. Mugaji Gaikwad
Age : 35 years, Occu.Agriculture,
R/o.Khalapuri,Tq.Ghansawangi,
Dist.Jalna.

...Respondent

* Mr. Mayur V.Salunke, advocate a/w. Mr. Vishal V. Udhan, Advocate for petitioners.

* Mr. Dhananjay K.Thote, Advocate for Respondent.

CORAM : SHAILESH P. BRAHME J.

RESERVED ON : 18th FEBRUARY 2025

PRONOUNCED ON : 21st FEBRUARY 2025

FINAL ORDER :

1. Heard both sides finally.
2. Order of injunction clamped against the petitioners by the trial court which is confirmed by the lower appellate court in M.C.A.No.34 of 2022 vide order dated 10.03.2023 is questioned by the petitioners. They are original defendants against whom respondent had filed R.C.S No. 94 of 2021 for injunction.
3. It is contended by learned counsel Mr. Salunke for the petitioners that lower appellate court recorded observations in favour of the petitioners but still dismissed the appeal. The respondent did not come with clean hands while seeking equitable relief. The acquisition of the land which was part of gut no. 193 was not reflected in the 7/12 extract and predecessor in title of the respondent took disadvantage of this fact. It is vehemently pointed out that Dharoba Mahasuji Khotkar was not in possession and cultivation of 55R of land and therefore entire mess was perpetuated in the subsequent transactions. It is submitted that the very existence of 35R of land purchased by the respondent is doubtful.

His sale deed is inconsistent with the previous sale-deeds. No prima-facie case is made out by the respondent.

4. My attention is adverted by Mr. Salunke to various transactions and ultimately the sale-deed of the respondent dated 18.03.2021 by which he purchased 35R out of gat no.193. Initially, gat no.193 was belonging to Kashinath Joshi who sold 14 Ana to Manaji Ukande and 02 Anna to Dharoba Mahasuji Khotkar. The land sold to Manaji was subsequently purchased by the petitioners. Petitioner no.1 is in possession of 1 H 1R and petitioner no.2 is in possession of 60R. As against that from land sold to Dharoba, 1 A 32R was acquired for the Jayakwadi canal project. It was not reflected in the 7/12 extract. Dharoba represented that he is owner of entire 2 H 30 R and proceeded to sale that to Saynaji Jarad in two parts each of 55R. Saynaji further alienated those two parts to Radhakisan and Rambhau. Thereafter, Radhakisan alienated 35R from his 55R to the respondent on 18.03.2021.

5. From the sale deeds of 26.02.1995, 02.12.1996, 26.09.2000 and 18.03.2021 it is tried to be demonstrated by Mr. Salunke that four

boundaries of the lands under alienation are inconsistent so as to disbelieve the alienation and claim of the respondent. He would point out the observations from paragraph nos. 14,18 and 20 which are in favour of the petitioners. It is submitted that the conclusion is perverse and unsustainable.

6. *Per contra*, learned counsel Mr. Thote appearing for the respondent submits that there is no perversity or patent illegality in the impugned orders to cause interference. Both the courts below have taken reasonable view in granting injunction. He would submit that petitioners did not object alienation which was referred in earlier paragraphs. It is submitted that trial court recorded that petitioners' names were not included in the 7/12 extract. The acquisition of the land is also not seen from the revenue record. He would submit that respondent is in possession and cultivating 35R land. He would therefore pray to dismiss the petition.

7. Mr. Salunke, advocate for the petitioners in rejoinder would submit that petitioners' names were included in 7/12th extract vide mutation entry No.2526. Respondent had challenged the mutation

before Tehsildar. By order dated 27.09.2021, application of respondent was rejected. The reliance is placed on the judgment of this Court in the matter of **Capt.Harcharanjit Singh Thind Vs. Deeksha Thind** reported in 2008(4) All MR 330 by referring to paragraph no.17.

8. I have considered rival submissions of the parties. At the outset it is necessary to mention that there are intricate questions of facts involved in the matter. There are multiple transactions which are referred by learned counsel for the petitioners. Admittedly, part of gat no. 193 to the extent of 01 A and 32R was acquired for Jayakwadi canal project. A full-fledged trial is necessary to adjudicate rival claims of the parties. Injunction granted by trial court on 06.12.2022 is in operation. The suit filed by the respondents is at the stage of recording of evidence.

9. Considering order passed by trial court below Exhibit-5 and impugned judgment in M.C.A.No.34 of 2022, I do not find that there is any grave perversity or patent illegality so as to quash both the decisions. This court is not in a position to embark an enquiry into

factual niceties. Learned counsel for the petitioners is however able to pursue this court that boundaries of the lands which are alienated vide sale-deeds dated 26.02.1995, 02.12.1996, 26.09.2000 and 18.03.2021 are inconsistent. Prima facie I have reservations for the claim of the respondent of having possession of 35R of land towards western side of the canal. However, it would be open to the scrutiny of the trial court. I propose marginal modification to order below Exhibit-05.

10. I dispose of writ petition substituting order passed by trial court on 06.12.2022 below Exhibit-5 by order that parties shall maintain status-quo till final disposal of the suit. Trial court shall decide the suit expeditiously.

[SHAILESH P. BRAHME, J.]