



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

WRIT PETITION NO. 11352 OF 2024

Mahadev Eknath Mane And Others

VERSUS

Deepak Baban Mane Thr His General Power Of Attorney Mother

Mr. H. V. Tungar, Advocate for Petitioners

Mr. R. D. Gaikwad h/f Mr. S. G. Kawade, Advocate for Respondent

CORAM : R. M. JOSHI, J.

DATE : 07th March, 2025

PER COURT :-

1. This petition takes exception to the order passed below Exhibit 5 in Regular Civil Suit No. 504/2023 which is confirmed in Misc. Civil Appeal No. 11/2024 by Principal District Judge, Beed.
2. Parties are referred to as plaintiffs and defendants for the sake of convenience.
3. Plaintiffs filed suit bearing Regular Civil Suit No. 504/2023 i.e., specific averment that the plaintiffs are owner in respect of the suit property bearing Survey No. 874/E/1. The said title is claimed to be acquired on the basis of sale deed dated 30.09.2000 filed along with plaint. Apart from this, Mutation Entry No. 444 is also relied upon to substantiate his contention about title and possession of the suit property. In the plaint, it is claimed that the suit property i.e., Survey No. 874/E/1 to the extent of 43 R consists in three parts and these parts are

mentioned separately with different boundaries. It is his contention that the defendant is in collusion with the Talathi has obtained mutation of record. There is allegation against defendants that they are causing obstruction to the possession of the plaintiffs over the suit and hence injunction is sought. Defendants by filing writ petition denied the averment/contention of the plaintiffs. It is claimed that previously, Regular Civil Suit No. 8/2005 and 25/2004 were instituted by the parties in respect of the same properties. Defendants have also denied the title and possession of the plaintiffs over the suit property.

4. Learned Trial Court allowed application Exhibit 5 with observation that plaintiffs have proved their case on the basis of documents on record i.e., sale deed and mutation entries. Trial Court has observed that in the previously instituted suit, the entire land from Survey No. 874/E/1 was not the subject matter and hence previous litigation does not disentitle relief to plaintiff. Learned Principal District Judge, Beed has confirmed the said order. Hence, this petition.

5. Learned counsel for the petitioners/defendants submits that the plaintiffs would not be entitled to get any interim injunction unless he proves the title and possession over the suit property. By drawing attention of the Court to the sale deed relied upon by the plaintiffs, it is contended that sale deed does not pertain to Survey No. 874/E/1. It is his further submission that in the plaint, it is claimed by the plaintiffs that

the suit property Survey No. 874/E/1 is forming in three different parts which is inconsistent to the revenue record placed before the Court. He further drew attention of the Court to entries therein indicating that Survey No. 874/A/1 to the extent of which is in two parts whereas Survey No. 874/E/1 also consists of two parts of 81 R each. Thus, it is his contention that there is no supporting material in order to accept the case of plaintiff at prima facie stage to be owner and in possession of suit land. He also argued that there is no specific pleading raised in the plaint in order to show that out of total area of survey 43 R land is remaining portion thereof. It is his submission that in respect of the case sought to be made out by defendants, burden is on the plaintiffs to prove his case in order to seek relief of injunction, which according to him plaintiffs have failed. He, therefore, seeks interference in impugned orders.

6. Learned counsel for the plaintiffs supported his impugned order. It is his submission that in the previous suit, entire suit Survey No. 874/E/1 was not the subject matter therein and, therefore, it is rightly been held so by the Trial Court. It is his submission by relying upon revenue record, particularly, Gav Namuna 8A for plaintiffs is owned and in possession of 43R land from Survey No. 874/E/1. It is his further contention that since both Courts below have recorded the findings in favour of the plaintiffs in exercise of the writ jurisdiction, same would not deserve interference.

7. This Court is fully conscious with the limitations for a writ Court to cause interference in the fact findings recorded by Trial Court. However, in case there is apparent perversity in the findings, such interference is permissible. Since, the plaintiffs filed suit for injunction against defendants, entire burden is on the plaintiffs to substantiate his case. The plaint indicates that the suit is filed in respect of Survey No. 874/E/1 and the title in respect of the said property is claimed on the basis of sale deed dated 30.09.2000. Prima facie, perusal of the said sale deed does not indicate that it pertains to Survey No. 874/E/1. Though, it is sought to be argued on behalf of the plaintiffs that the Survey No. 874/A/1 is now re-numbered as Survey No. 874/E/1, this contention does not deserve acceptance, in view of the fact that judgment dated 19.11.2015 passed in Regular Civil Suit No. 8/2005, Survey No. 874/E/1 and Survey No. 874/A/1 are shown as two different properties. Apart from this, even if, contention of the learned counsel for the plaintiffs is considered that Survey No. 874/E/1 is a subject property and is entitled for relief of injunction, the revenue record placed before the Trial Court indicates that in so far as Survey No. 874/E/1, does not form three parts and there are two portions only. There is no explanation found in the plaint in this regard, from plaintiffs.

8. In view of the above, apparent facts on record, this Court finds substance in the contention of learned counsel for

petitioners/defendants that the Trial Court in ignorance of the documents on record proceeded to grant of injunction. The findings recorded by the Trial Court since not consistent with the material on record are perverse. Learned Appellate Court has also ignored the evidence on record and mechanically confirmed the order passed below Exhibit 5 by Trial Court. In view of this discussion, there is no prima facie evidence to indicate that plaintiff is the owner of the suit property Survey No. 874/E/1 to the extent of 43R land and, therefore, the question of grant of any injunction in favour of plaintiffs does not arise. Hence, petitioner has succeeded to make out case for causing interference in the impugned orders. Impugned orders are set aside.

9. It is clarified that the observations made in this order shall not bind to the Trial Court at any further stage of the proceedings.

(R. M. JOSHI, J.)

bsj