



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

10 WRIT PETITION NO. 3159 OF 2024

**NARAYAN BHAURAO DABHADE
VERSUS
EKNATH DEORAI DABHADE AND OTHERS**

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Advocate for the Petitioner : Mr.Murkute J.M.
Advocate for Respondent Nos. 1 to 12 : Mr.Ravindra V.Gore

...
CORAM : SHAILESH P. BRAHME, J.
DATE : 17th FEBRUARY 2025

PER COURT :

1. Heard both sides.
2. Petitioner is aggrieved by judgment and order dated 31.07.2023 passed by Ad-hoc District Judge-2, Vaijapur District Aurangabad in M.C.A No. 05 of 2023 thereby modifying order passed below Exhibit-5 and confirming order below Exhibit-40.
3. Petitioner is plaintiff who has filed R.C.S No. 127 of 2022 for declaration and possession. The controversy between the parties pertains to land gut no.169 and 171 situated at village Kasoda, Tq.Gangapur, Dist.Chhatrapati Sambhajnagar. Previously there was partition and petitioner was allotted gut no. 169 and forefathers of respondents were allotted gut no. 171. Petitioner claims to be owner of gut no. 169 which has been encroached by the respondents/defendants. It is the contention of the petitioner that

respondents are running brick kiln unauthorizedly in gut no.169 causing damage to the land. He filed application Exhibit-5 to restrain them from creating any third party interest and from changing the nature of the suit land and other consequential reliefs.

4. The suit and application below Exhibit-5 was contested by the respondents by filing written statement as well as counter claims for declaration and injunction. It is the case of the respondents that they are lawfully in possession and running business of brick kiln and onion storage house. They were being obstructed by the petitioners. Hence, application Exhibit-40 was filed to restrain the petitioner.

5. By common order, learned trial court allowed application Exhibit-05 partly and application Exhibit-40 fully. The said common order is sought to be challenged before lower appellate court. Lower appellate court slightly modified order below Exhibit-05 and confirmed order below Exhibit-40.

6. Learned counsel for the petitioner submits that the concern is for the detrimental activity of the respondents of running brick kiln unauthorizedly in gut no. 169. That is causing damage to the land due to the excavation and use of soil. On instruction, he submits that he does not have any serious objection for the injunction to the extent of the other properties including onion storage house.

7. Learned counsel for respondent Mr.Gore would support impugned judgment and order. I made a specific query to learned

counsel for the respondents in respect of use of soil, excavation and changing the nature of gut no.169. He fairly submitted that neither the soil has been used from gut no.169 nor any damage is being caused to the quality of gut no.169.

8. Whole concern at this juncture is to maintain the quality of the land of gut no.169 and not to change its nature. Lower appellate court has taken due care in the impugned judgment and order to protect the interest of the petitioners by specifically restraining the respondents from changing the nature of the suit land. In addition to that, learned counsel for the respondent on instruction assured this Court that the nature of the land would not be changed. In view of the statement of learned counsel for the respondents, I deem it appropriate that the interest would be sub-served in maintaining the order passed by lower appellate court.

9. I need not delve upon the rival submissions on the merits of the matter. It would be open to the trial court to decide the contentious issues at the time of hearing of the suit. Writ petition is disposed of with additional direction to the respondents to not to use the soil from gut no.169 or cause any damage to the said land.

[SHAILESH P. BRAHME, J.]