



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 3389 OF 2020

- 1) Abhiman s/o Parashram Chaudhari
age : 70 years, Occu : Agriculturist
- 2) Subhash s/o Abhiman Chaudhari,
age 50 years, Occ : Agriculturist
Both R/o Gondagaon, Tq. & Dist.
Washim

.. **Petitioners**

Versus

- 1) Shriram s/o Demaji Chaudhari,
age : 65 years, Occ : Agriculturist
- 2) Gopal s/o Shriram Chaudhari,
age : 35 years, Occ : Agriculturist
- 3) Santosh s/o Shriram Chaudhari,
age : 30 years, Occ : Agriculturist
- 4) Devidas s/o Tukaram Gawande
age : 65 years, Occ : Agriculturist
- 5) Bhanudas s/o Tukaram Gawande
age : 50 years, Occ : Agriculturist
- 6) Santosh s/o Devidas Gawande
age : 40 years, Occ : Agriculturist
- 7) Gopal s/o Devidas Gawande
age : 38 years, Occ : Agriculturist
- 8) Narayan s/o Devidas Gawande
age : 35 years, Occ : Agriculturist
- 9) Ganesh s/o Devidas Gawande
age : 30 years, Occ : Agriculturist
- 10) Sunil s/o Ramdas Gawande
age : 35 years, Occ : Agriculturist
All R/o Gondagaon, Tq. & Dist. Washim

.. **Respondents**

 Ms. Aastha Sharma, Advocate h/f Mr. P. R. Agrawal, Advocate for
 Petitioners.

None for the respondents.

CORAM : ABHAY J. MANTRI, JJ.

DATED : JANUARY 02, 2025

ORAL JUDGMENT

I heard the learned counsel for the petitioners at length. None appears for the respondents though served.

(2) The petitioners/original plaintiffs are constrained to approach this Court aggrieved by the Judgment and order dated 07/10/2020 passed by learned Ad-hoc District Judge-1 Washim in Misc.Civil Appeal No.15/2020 thereby allowed the appeal and rejected the application for a grant of a temporary injunction filed by the petitioners.

(3) In brief, the plaintiffs have filed the suit for permanent injunction in respect of Gat No.107, admeasuring 1H 26R out of the total area of 2H 47R situated at village Gondegaon Taluka and District Washim (hereinafter referred to as '*suit field*'). The bone of the contention of the plaintiffs is that they have been in settled possession of the suit field for a long time; however, in the year 2019, the defendants, with ill motives, tried to take possession of the suit fields illegally and, therefore, they have filed the suit.

(4) The plaintiffs have also filed an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure (for short- 'CPC') for the grant of a temporary injunction for restraining the defendants or any person on their behalf from causing any interference in the peaceful possession of the petitioners over the suit fields. Learned Joint Civil Judge Junior Division (for short- "Jt.CJJD"), Washim, after considering the rival contentions of the parties, allowed the application, holding that *"the plaintiffs have made out a prima-facie case and the balance of convenience lies in their favour and, therefore, granted interim injunction in their favour."*

(5) Aggrieved by the said order, the defendants have preferred Misc.Civil Appeal No.15/2020 before the learned Ad-hoc District Judge-1 Washim. After considering the pleadings of the parties, the learned District Judge reversed the said order and rejected the application filed by the plaintiffs. Hence, this petition.

(6) Learned Counsel for the petitioners vehemently contended that the petitioners in support of their claim have produced 7/12 extracts of Gat No.107 of the years 1998-1999, 2006-2007, 2011-2012, **2018-2019**, a certified copy of the extract of 8-A and photocopy of sale deed dated 04/05/1979. Based on the said documents, plaintiffs prima facie demonstrate that they are in possession of the suit fields. The learned trial Court rightly considered

the fact and held that plaintiffs had made out a prima facie case, and the balance of convenience lies in their favour, so an injunction was granted. However, the learned appellate Court failed to consider the documents on record in its proper perspective and erred in discarding the documents produced on record. The learned appellate Court has erred in holding that "*mere mutation entries are not evidence of the ownership and actual physical possession.*" Thus, the findings given by the learned appellate Court appear perverse and contrary to the settled position of law. *Therefore*, Ms. Astha Sharma, learned counsel for the petitioners submitted that the learned trial Court has rightly considered the documents on record and that the petitioners are entitled to the relief of injunction. Further, based on the documents, she urged for allowing the petition.

(7) I have considered the contentions of the learned Counsel for the petitioners and perused the impugned orders and record.

(8) At the outset, it appears that plaintiffs are claiming their ownership, as well as possessory right over the suit fields based on the sale deed dated 04/05/1979 and 7/12 extracts of Gat No.107 of the year 1998-1999, 2006-2007, 2011-2012, and **2018-2019**, a certified copy of the extract of 8-A and photocopy of sale deed bearing No.1306/1979. It is pertinent to note that the defendants have not disputed that based on the registered sale deed dated 04/05/1979,

plaintiff No.2 got the ownership and possessory right in the suit fields. However, their only grievance is that the plaintiff No.2 had sold the suit field to one Dnyanba Ganaji Bhalerao by registered sale deed dated 06/03/1982; said Dnyanba sold the said land to defendant Nos.1, 4 and 5 by registered sale deed dated 24/05/1983 and since then they are in possession of the said land. But, based on the sale deeds, neither Dnyanba's name nor defendants Nos.1, 4 and 5 have been mutated in the revenue record. In such an eventuality, the plaintiffs were taking undue advantage of the said fact and claiming their possession over the suit fields; in fact, they are not in possession of the suit fields.

(9) It is a settled position of law that the entries in the revenue record, i.e. 7/12 extract, have presumptive value under the Maharashtra Land Revenue Code unless the same is contrary proved. *Undisputedly*, the plaintiffs' names are recorded in the 7/12 extract as owner and possessor, indicating that the plaintiffs possess the suit fields. Had it been the fact that in the year 1982-83, if plaintiff No.2 executed the sale deed in favour of Dnyanba and Dnyanba further executed the sale deed in favour of defendant Nos.1, 4 and 5, in such an eventuality, their names should have been mutated in 7/12 extract based on the said sale deeds. *Besides*, if they had been in possession for a long time, their names should have been recorded in the cultivation column as possessor, but their names do not appear in the

7/12 extract. Therefore, adverse inferences can be drawn against them.

(10) To ascertain the fact that who is in possession of the suit fields, the Court has to take into consideration the entries in the revenue record, which have the presumptive value under the Maharashtra Land Revenue Code and considering the presumptive value to the entries in 7/12 record, the learned trial Court has rightly held that based on the sale deed and entries in the 7/12 extract from 1998 to 2018-19 the plaintiffs have prima facie shown that they are in possession of the suit fields and therefore, granted injunction in their favour.

(11) The learned appellate Court, though observed that the plaintiffs' names have been mutated in the 7/12 extract as owner and possessor, however, erred in holding that "*mere entries in the revenue record are not the evidence of the ownership and actual physical possession, but the same was used for fiscal purpose and collecting the revenue,*" therefore, reversed the findings of the trial Court in that regard. The learned appellate Court further observed that "plaintiffs have suppressed the fact of execution of the exchange-deed dated 06/03/1982 in favour of Dnyanba and therefore, plaintiffs did not come to the Court with clean hands while claiming the equity, thus, allowed the appeal and set aside the order passed by the trial Court and

rejected the application Exh.5.

(12) Thus, the findings recorded by the learned appellate Court appear contrary to the facts on record and the settled position of law. While considering the question of possession over the suit fields, it is necessary to see who is prima facie in possession of the suit fields. The plaintiffs have categorically demonstrated that their names have been recorded in the 7/12 extract as owner and possessor from 1998 till the filing of the suit. The entry in the 7/12 extract has a presumptive value unless contrary proved. In the case at hand, the defendants also did not dispute the recording of the names of the plaintiffs in the 7/12 extract and the cultivation column. Still, they only claimed ownership and possessory rights based on the subsequent transaction of 1982-83, but they failed to show their prima facie possession over the suit fields based on the said transaction. Therefore, in my view, the appellate Court erred in reversing the well-reasoned findings recorded by the learned trial Court. Hence, based on the said findings, the order of the appellate Court cannot be sustained in the eyes of the law. On the contrary, the same appears to be improper. The same is required to be set aside.

(13) Thus, it appears that the learned trial Court, after considering the documents on record, rightly appreciated the same and held that the plaintiffs have made out a prima facie case and granted

an injunction in their favour. The findings recorded by the trial Court are well-reasoned. However, the findings given by the learned appellate Court, which discarded the entries in the 7/12 extract merely on the assumption and presumption, could not be sustained in the eyes of law. The first appellate Court seems to have been swayed away in discarding the entries in the 7/12 record. Therefore, the same needs to be quashed and set aside that being so interference is required.

(14) In the above background, it seems that petitioners have made out a prima facie case for grant of injunction. Hence, I deem it appropriate to allow the petition.

(15) Accordingly, the writ petition is allowed. The impugned order dated 07/10/2020 passed by the learned Ad-hoc District Judge-1, Washim, in Misc. Civil Appeal No.15/2020 is hereby quashed and set aside, and the order passed by the learned trial Court is confirmed. No order as to costs.

(16) Inform the learned trial Court.

[ABHAY J. MANTRI, J.]

KOLHE