

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5610 OF 2015**

Shri Dhanpal Nema @ Nemu
alias Neminath Chougule

Petitioner

Vs

Smt. Surekha Jaypal Chougule
and Anr

.. Respondents

Mr. Manoj Patil, Advocate for the petitioner.

CORAM : R.G.KETKAR,J.

DATE : 30/07/2015

PC:

1. Not on Board. At the request of Mr. Patil, taken up for admission. Heard Mr. Manoj Patil, learned counsel for the petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, original plaintiff has challenged the Judgment and order dated 29.12.2014 passed by the learned Civil Judge, Jr. Dn., Jaysingpur, below Exhibit-5 in Regular Civil Suit No.222 of 2014 as also the Judgment and order dated 13.4.2015 passed by the learned District Judge-1, Jaysingpur in Misc. Civil Appeal No.5 of 2015. By these orders, the Courts below dismissed the application taken out by the petitioner, hereinafter referred to as plaintiff, for injunction restraining the defendants from creating third party interest as also from disturbing the plaintiff's possession over the property in dispute.

3. Perusal of paragraph 10 of the trial Court's order clearly shows that after considering the 7/12 extracts as also payment of tax receipts, the learned trial Judge held that prima facie the

defendants are in possession of the suit land. Perusal of paragraph 11 of the District Court Judgment also indicates that the learned District Judge held that 7/12 extracts as also receipts indicate that respondent's name is shown in 'crop cultivation column' and they have paid revenue taxes. I, therefore, do not find that the courts below committed any error in passing the impugned order.

4. Mr. Patil relied upon clause (4) of Agreement dated 19.10.2011 which shows that the defendants have handed over possession to the plaintiff. He also relied upon the letter dated 26.10.2011 addressed by the husband of defendant no.1 to the Chariman, Shirti Vividh Karyakari Society, wherein it is set out that possession of the property in dispute is handed over to the plaintiff. I do not find any merit in this submission. The courts below have considered these documents and held that these documents prima facie do not indicate possession of the plaintiffs.

5. In view thereof, it is not possible to accept the submission of Mr Patil based on these documents that the plaintiff is in possession. The Courts below after considering the material on record have concurrently held that the defendants are in possession.

6. In the case of Wander Ltd and Anr Vs. Antox India P Ltd, 1990 (Supp) Supreme Court Cases 727, the Apex court in

paragraph 14 has observed as under :

“.... ... the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. The Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial Court's exercise of discretion. After referring to these principles Gajendragadkar, J. in *Printers (Mysore) Private Ltd. V Pothan Joseph*, (1960) 3 SCR 713 , (SCR 721)

“... These principles are well established, but as has been observed by Viscount Simon in *Charles Oseinton & Co. V. Jhanaton*, 1942 AC 130 ' ... the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case'.”

After considering the material on record, I do not find that the Courts below committed any error in exercising the discretion. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed.

(R.G.KETKAR, J.)