

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5293 OF 2014

- | | | | |
|----|---------------------------------------|---|--------------------|
| 1] | Shri Vijay Vithal Jamdade |] | |
| | Age : 64 years, Occ : Agriculturist. |] | |
| | |] | |
| 2] | Shri Suresh Vithal Jamdade |] | |
| | Age : 66 years, Occ : Agriculturist. |] | |
| | |] | |
| 3] | Shri Arun Vithal Jamdade |] | |
| | Age : 56 years, Occ : Agriculturist. |] | |
| | |] | |
| 4] | Shri Alka Ramesh Korde |] | |
| | Age : 52 years, Occ : Household. |] | |
| | |] | |
| | All residing at Phule Nagar, Wai, |] | |
| | Taluka – Wai, District Satara. |] | |
| | |] | |
| 5] | Sou. Ranjana Ramakant Shende |] | |
| | Age : 48 years, Occ : Household. |] | |
| | R/at Baramati, District Pune. |] | |
| | |] | |
| 6] | Sou. Shobha Arvid Kudale |] | |
| | Age : 50 years, Occ : Household |] | |
| | R/at Dattanagar, Siddhanathwadi |] | |
| | Taluka Wai, District Satara. |] | |
| | |] | |
| | Through himself and Power of Attorney |] | |
| | Holder of Nos. 2 to 6 |] | |
| | Shri Vijay Vithal Jamdade |] | |
| | Age : 64 years, Occ : Agriculturist |] | |
| | R/at : Phule Nagar, Wai |] | |
| | Taluka Wai, District Satara |] | Petitioners. |

versus

- | | | | |
|----|-------------------------------|---|--|
| 1] | Mohammed Ibrahim Sheikh |] | |
| | Through Power of Attorney |] | |
| | Salian Mohammed Sheikh |] | |
| | Age : 40 years, Occ : Service |] | |

	Residing at 1381, Songirwadi, Wai	]
	Taluka Wai, District Satara	]
		]
2]	Lailabi Bahushah Fakir	]
	Age : 65 years, Occ : Housewife	]
	R/at Phule Nagar, Wai	]
	Taluka Wai, District Satara	]
		]
3]	Ailan Mohammad Shaikh	]
	Age : 38 years, Occ : Service	]
		]
4]	Khailan Mohammad Shaikh	]
	Age : 35 years, Occ : Service	]
		]
3]	Baby Mohammad Sheikh	]
	Age : 26 years, Occ : Household	]
		]
	All residing at 232381, Songirwadi Wai,	]
	Taluka Wai, District Satara	]
		]..... Respondents.

Mr. S R Nargolkar a/w Ms. Meenakshi Sakhare for the Petitioners.
 Mr. Nitin P Deshpande for the Respondent No.1.

CORAM : R. M. SAVANT, J.
 DATE : 21st August 2015

P.C.

1 Rule, with the consent of the learned counsel for the parties made returnable forthwith and heard.

2 The writ jurisdiction of this Court is invoked against the order dated 19/03/2014 passed by the learned District Judge-2 Satara by which order Misc. Civil Appeal Nos.40/2004 and 41/2004 filed by the Respondents came to be allowed and resultantly the order dated 7/1/2004 passed by the learned Joint Civil Judge, Junior Division, Wai rejecting the Application

(Exhibit 5) filed by the Respondents/original Plaintiffs and allowing the Application (Exhibit 62-A) filed by the Petitioners/Original Defendants came to be set aside.

3 It is not necessary to burden this order with unnecessary details having regard to the nature of directions to be issued. Suffice it would be to state that the Respondents herein are the original Plaintiffs who have filed the suit in question for simplicitor injunction and the bone of contention is the possession over the land bearing Survey No.530/2 admeasuring 02 Hectares 78 Ares situated at Phule Nagar, Taluka Wai , District Satara. It is the case of the Plaintiffs that they are the owners of the said land and that they had executed a nokarnama in favour of the original Defendant one Vithal Balwant Jamdade whose heirs are the present Petitioners for the purpose of cultivating the said land. The said nokarnama was for a particular period and has come to an end. It is the case of the Respondents/original Plaintiffs that the said original Defendant had become old and was not able to cultivate the land in question, that they started getting the land cultivated from one Shalan Mohammed Inamdar. However, in view of the opposition of the original Defendant who had also filed proceedings for entering his name in the revenue record, that the instant suit being 66 of 2002 came to be filed by the Plaintiffs for simplicitor injunction. In the said suit, the Plaintiffs filed an application for temporary injunction which was replied to on behalf of the original Defendant. In the

said suit, the original Defendant filed Counter Claim and also filed an Application (Exhibit 62-A) for injunction against the Plaintiffs.

4 The Trial Court considered both the Applications i.e. Application (Exhibit 5) filed by the Plaintiffs and the Application (Exhibit 62-A) filed by the original Defendant for temporary injunction. Before the Trial Court the original Defendant relied upon various documents i.e. the receipts of seeds purchased by the Defendant, Certificate issued by Kisan Veer Factory in respect of supply of sugarcane to it, receipts of water tax paid to the Krishna Khore and the affidavits of the adjoining land holders etc. On behalf of the Plaintiffs the reliance was placed on the nokarnama as also the factum that they are now getting the land cultivated from one Shalan Mohammed Inamdar and, the adjudication that had taken place in the RTS proceedings. The Trial Court considered the said Applications (Exhibit 5 and Exhibit 62-A) and by its order dated 7/1/2014 for the reasons mentioned in the said order allowed the Application (Exhibit 62-A) filed by the Defendant and rejected the Application (Exhibit 5) filed by the Plaintiffs. The Trial Court held that the documents prima facie disclose that it is the original Defendant who was in possession of the suit property. However, significantly the Trial Court has not alluded to the case of the Plaintiffs that they were in possession and getting the suit land cultivated from the said Shalan Mohammed Inamdar.

5 The Plaintiffs aggrieved by the order dated 7/1/2014 granting injunction against them vide the Application (Exhibit 62-A) and rejecting their Application (Exhibit 5), challenged the same by filing two Appeals being Misc. Civil Appeal No.40 of 2004 and 41 of 2004. The Lower Appellate Court having regard to the fact that the nokarnama of the original Defendant had come to an end and that in view of the said nokarnama it was always the Plaintiffs who are in constructive possession held that the material produced by the Defendants in support of their case of possession would be of no avail. The Lower Appellate Court therefore held that the Trial Court had erred in granting injunction without considering the aforesaid facts. The Lower Appellate Court accordingly set aside the order passed in both the Applications i.e. Exhibit 5 and Exhibit 62-A and in turn allowed the Application (Exhibit 5) filed by the Plaintiffs and rejected the Application (Exhibit 62-A) filed by the original Defendant. However, the Lower Appellate Court has also not considered the case of the Plaintiffs that they are in possession and are getting the land cultivated from the said Shalan Mohammed Inamdar. The Lower Appellate Court as indicated above has primarily proceeded on the premise that since the nokarnama was executed in favour of the original Defendant, and since the nokarnama has come to an end, the heirs of the original Defendant have no right to continue in possession. As indicated above it is the said order dated 19/03/2014 which is taken exception to by way of the above Petition.

6 The learned counsel appearing on behalf of the Petitioners sought to make submissions for and against the grant of injunction in favour of the respective parties that they are representing, whereas it is the contention of the learned counsel appearing on behalf of the Petitioners Shri Nargolkar that the Trial Court had rightly allowed the Application for injunction filed by the Defendants and rejected the Application for injunction filed by the Plaintiffs. The Lower Appellate Court according to him has erroneously set aside both the orders. Whereas it is the contention of the learned counsel appearing for the Respondents Shri Deshpande that the Lower Appellate Court in view of the material on record has rightly come to a conclusion that the original Defendant being put in possession pursuant to the nokaranama, the Defendant was always in constructive possession has rightly set aside the order passed by the Trial Court.

7 Though the Courts below have considered the material on record, however, significantly both the Courts below have not considered the case of the Plaintiffs that on the nokarnama coming to an end and since the original Defendant had become old, they had appointed one Shalan Mohammed Mohammed Inamdar to cultivate the land in question, whilst the Trial Court has relied upon the documents which were produced on behalf of the Defendants, the said case of the Plaintiffs was not considered. The consideration of the said case becomes important as in the instant case the suit

being for simplicitor injunction, the defining aspect is of possession. In my view, therefore since both the Courts below have not adverted to the case of the Plaintiffs that they are now cultivating the land through the said Shalan Mohammed Inamdar, a finding would therefore have to be recorded in respect of the said aspect on the basis of the material on record. The impugned order passed by the Lower Appellate Court would have to be set aside and the matter would have to be relegated back to the Lower Appellate Court for a de-novo consideration of the Appeals. Hence the following directions :-

- [1] The impugned order dated 19/03/2014 passed by the Lower Appellate Court i.e. the learned District Judge-2, Satara is quashed and set aside and the matter is relegated back to the Lower Appellate Court for a de-novo consideration of the Appeals being Misc. Civil Appeal No.40 of 2004 and 41 of 2004.
- [2] The Lower Appellate Court would consider the said Appeals in terms of the observations made herein above.
- [3] Since the order passed by the Lower Appellate Court is set aside the parties are directed to maintain status quo on the site in question as on 19/03/2015 i.e. the date of the order of the Lower Appellate Court.

- [4] The Lower Appellate Court would consider the aspect of possession afresh, whilst doing so the Lower Appellate Court is directed to consider the case of the Plaintiffs that they are in possession which is revolving around their case of cultivating the land through the said Shalan Mohammed Inamdar.
- [5] The parties to appear before the Lower Appellate Court on 03/09/2015. The Lower Appellate Court to thereafter decide the said Appeals latest by 31/10/2015.
- [6] The above Writ Petition is accordingly allowed to the aforesaid extent. Rule is accordingly made absolute with the parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]