

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

**WRIT PETITION NO.3942 OF 2015**

Krushnarao s/o Ganeshrao Deshmukh

-vs-

Shankar s/o Dattatraya Deshpande

---

Office notes, Office Memoranda of  
Coram, appearances, Court's orders  
or directions and Registrar's orders.

Court's or Judge's Orders.

---

Shri V. G. Wankhede, Advocate for petitioner.

Shri K. Mahalle, Advocate for respondent.

**CORAM : A.S.CHANDURKAR, J.**

**DATE : December 10, 2015**

The original defendant in R.C.S. No.20 of 2013 is aggrieved by the order passed by the Appellate Court allowing the application for injunction filed by the respondent and setting aside the order passed by the trial Court refusing to grant temporary injunction.

Shri V. G. Wankhede, learned counsel for the petitioner submitted that the petitioner was in possession since long and that the mutation entries showing the names of the respondents were in view of proceedings initiated against dead persons. He submitted that the trial Court rightly rejected the prayer for injunction and the same was set aside by the Appellate Court on irrelevant considerations. According to him, the plaint had been amended for seeking the relief of possession and therefore the Appellate Court was not justified in allowing the appeal. He referred to the affidavits filed on record of neighbouring field owners to indicate his possession. He therefore

submitted that the impugned order deserves to be set aside.

Shri K. Mahalle, learned counsel for the respondent supported the impugned order and submitted that name of respondent has been restored in the revenue records as per the order dated 14/01/2015. He submitted that the petitioner did not have any title to the suit field and therefore the Appellate Court was justified in allowing his appeal. He submitted that the amendment as made for possession was an alternate prayer and same would not mean that the respondent was not in possession.

Having perused the impugned order as well documents filed on records, it cannot be said that the view as taken by the Appellate Court is an impossible view. The Appellate Court has considered the respective cases and has come to the conclusion that the documents on record indicated prima facie, the possession of the original plaintiff. The stand as taken by the petitioner has not been accepted on the ground that same was based on an oral transaction which was not yet proved.

Considering the reasons assigned by the Appellate Court, I do not find that any case is made out to interfere in writ jurisdiction. By clarifying that observations made are only for the purposes of deciding the temporary injunction application and by expediting the proceedings in R.C.S. No.20 of 2013, the writ petition is disposed of with no order as to costs.

**JUDGE**