

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

WRIT PETITION NO.2985 OF 2014.

(GIRISH DAYARAM WATH & ANR...VS..CHANDRAPRAKASH GOPALRAO SANDE.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri J.B.Kasat, Advocate for Petitioners.
Shri P.R.Agrawal, Advocate for Respondent..

CORAM : Z.A.HAQ, J.

DATED : SEPTEMBER 28, 2015.

Heard learned advocates for the respective parties.

2. The petition is filed by the original defendants challenging the orders passed by the subordinate Courts rejecting the application filed by the petitioner praying for temporary injunction.

3. The respondent / plaintiff had filed suit praying for decree for declaration that the plaintiff is in possession of the suit land since 5th September, 2000. The respondent/ plaintiff has prayed for decree for declaration that the agreement dated 5th August, 2003 has never been acted upon and that the decree passed in Regular Civil Suit No. 11 of 2004 is not binding on the plaintiff. The respondent / plaintiff has prayed for decree for injunction restraining the petitioner from interfering with the possession of the plaintiff over the suit land.

4. In this civil suit, the petitioners/ defendants filed an application under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure praying that the plaintiff, relatives, agents, servants or anybody on behalf of the plaintiff be restrained from disturbing the peaceful possession of the defendants over the suit land. The trial Court, by the order dated 19th April, 2014 dismissed the application filed by the petitioners/ defendants. The order passed by the trial Court was challenged in appeal which is dismissed by the District Court. The petitioners being aggrieved in the matter have filed this petition.

5. Though the learned advocates for the respective parties have made detailed submissions to substantiate the contentions of the respective parties, in my view, the petitioners/ defendants, in the facts of the case, cannot seek temporary injunction restraining the plaintiff from disturbing the alleged possession of the defendants over the suit land.

6. Shri Kasat, learned advocate for the petitioners has submitted that the Court has jurisdiction to grant temporary injunction in favour of the defendants restraining the plaintiff from interfering with the possession under Section 151 read with Section 94 of the Code of Civil Procedure. In support of the submission reliance is placed on the judgment given by this Court in the case of *Harishchandra Narayan Maurya Vs. Rajendraprasad Dargahi Varma*, reported in **1996(4) ALL MR 538**. In that case, this Court recorded that an injunction can be granted under Section 151 of the Code of Civil Procedure in favour of the defendant in the peculiar facts of that case. The plaintiff had obtained temporary injunction against the defendant on the basis that

the plaintiff dispossessed the defendant and when the relevant facts were pointed out to the Court, exercising jurisdiction under Section 151 of the Code of Civil Procedure, the Court directed the restoration of the possession to the defendants. The conclusions of this Court in the case of *Harischandra Narayan Maurya* (supra) are in those circumstances. It cannot be said that the defendants can seek temporary injunction, in normal course, restraining the plaintiff from disturbing the alleged possession of the defendant over the suit land.

7. As I find that the claim of the defendant for grant of temporary injunction cannot be considered under Section 151 of the Code of Civil Procedure, I see no reason to interfere with the impugned order.

The petition is **dismissed**. In the circumstances, the parties to bear their own costs.

Needless to say that the petitioners will be at liberty to seek redressal of their grievance by resorting to the appropriate proceedings, if so advised.

It is further clarified that as the application filed by the petitioners is held to be untenable, the observations made by the subordinate Courts in the impugned orders will not affect the adjudication of the claim made by the petitioners in the appropriate proceedings.

JUDGE