

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

APPEAL AGAINST ORDER NO.79 OF 2015

Bhimrao Kawduji Wasnik
-vs-
Narayandas Bhagwandas Gupta

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

Court's or Judge's Orders.

Shri Rahul Tajne, Advocate for appellant.
Shri M. G. Bhangde, Senior Advocate with Shri S. S.
Alaspurkar, Advocate for respondent.

CORAM : A.S.CHANDURKAR, J.
DATE : AUGUST 19, 2015

Heard finally with consent of learned counsel for the parties.

The appellant is the original defendant in Spl.C.S. No.41 of 2015 who is aggrieved by the order passed by the trial Court below Exhibit-5 allowing the application for temporary injunction moved by the respondent herein thereby restraining the appellant from disturbing the possession of the respondent.

It is the case of the respondent that on 09/04/1979 the predecessor in title of the respondent-Ramehschandra purchased the suit field admeasuring 3H 23R. Thereafter on 30/12/1983, the respondent purchased the suit field from said Rameshchandra. Since said day it was the respondent who was in possession. On an obstruction being sought to be caused by the appellant, suit for declaration of title and for permanent injunction came to be filed. An application for temporary injunction was also moved before the trial Court. The appellant filed his reply denying the prayer made therein. According to the appellant the sale deed dated 30/12/1983

was illegal and not binding on the appellant. The trial Court after considering the material on record allowed the application for temporary injunction.

Shri R. Tajne, learned counsel for the appellant referred to the sale deeds dated 09/04/1979 and 30/12/1983 and submitted that no legal rights whatsoever were created in favour of the respondent on the basis of those sale deeds. According to him, the father of the appellant expired on 20/08/1983 and certain sale deeds placed on record were shown to have been executed by said Kawduji even after his death. It was submitted that merely on the basis of revenue entries the trial Court had allowed the application for temporary injunction. It was further submitted that now by seeking police aid the respondent wanted to oust the appellant from possession.

Shri M. G. Bhangde, learned senior counsel for the respondent supported the impugned order. It was submitted that the sale deed dated 09/04/1979 also bears the signature of the appellant. It was submitted that since 1983 the respondent was in possession and the revenue records also reflected the same. The trial Court by considering all the material placed on record had granted interim injunction and hence there was no reason to interfere with the said order.

Having heard the respective counsel and having gone through the documents filed on record, I do not find any legal reason to interfere with the order passed by the trial Court. The trial Court while taking a prima facie view of the matter has found that in terms of earlier sale deed dated 09/04/1979 executed in favour of the predecessor of the respondent, the respondent got valid title by virtue of the subsequent sale deed dated 30/12/1983. It found that the appellant was a signatory to the sale deed dated 09/04/1979. The

revenue records showing possession of the respondent were also taken into consideration. In absence of any other adverse material being available on record, the discretion exercised by the trial Court cannot be said to be illegal to warrant interference.

Hence for aforesaid reasons there is no reason to interfere with the impugned order. It is however clarified that the trial Court shall decide the suit by considering all the evidence that would be led in the trial and shall not be influenced by any observations made in the impugned order or in this order which observations are merely for the purposes of deciding the interim application.

Appeal is accordingly dismissed with no order as to costs.

JUDGE