

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

WRIT PETITION NO.5109 OF 2014.

(SMT. SUSHILABAI SHANKARRAO DUKARE (PATIL) & 11 OTH. VS. DHANANJAY
HARIBHAU VYAWAHARE & 3 OTH.)

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

Court's or Judge's orders

CORAM : Z.A.HAQ, J.

DATED : APRIL 10, 2015.

Heard Mr. R.G.Kavimandan, the learned advocate for the petitioners and Mr.K.P.Sadavarte, the learned advocate for the respondent No.1-caveator.

2. The writ petition is filed by the original plaintiffs challenging the order passed by the District Court by which the District Court allowed the appeal filed by respondent No.1/ defendant and has set aside the order passed by the trial court granting temporary injunction in favour of the petitioners.

3. The petitioners have filed civil suit praying for the decree for declaration that the sale deeds dated 8th November, 1985, 28th May, 2007 and 21st July, 2010 are not binding on the plaintiffs as they have been executed without any right or authority and that the above mentioned sale deeds do not confer title on the defendants. The plaintiffs have also prayed for decree for perpetual injunction restraining the defendants from obstructing and disturbing the possession of the plaintiffs over the suit property. Along

with plaint, the plaintiffs filed application praying for temporary injunction which came to be allowed by the trial Court. The respondent No.1/ defendant No.1, being aggrieved by the order passed by the trial Court, had filed appeal which is allowed by the impugned order. The petitioners/ plaintiffs, being aggrieved by the order passed by the learned District Judge, have filed this petition.

4. The petitioners are seeking to substantiate their claim in respect of the possession over the suit field on the basis of affidavits of the adjoining owners. As against this, the respondent No.1 / defendant No.1 has relied on the documentary evidence i.e. the entries in the revenue records, which show that Shri Pundlik Shripat Bhutekar – predecessor of respondent No.1 was in cultivating possession of the suit field on the basis of the sale-deed dated 8th November, 1985. The defendants have relied on the entry in the revenue records showing the name of the defendant No.3 which is taken pursuant to the sale-deed dated 29th May, 2007. The defendants have relied on the entries in the revenue records showing the name of defendant No.1 pursuant to the sale-deed dated 21st July, 2010.

5. Shri Kavimandan, the learned advocate for the petitioners has submitted that the entries taken in the revenue records have been cancelled on 30th March, 2008 and he relied on the document filed as Annexure-12 at page No. 76 and Annexure-13 at page 77 of the writ petition. However, it is submitted that the cancellation of the mutation entries is subjudiced before the superior authority.

6. Be that as it may, the petitioners are seeking temporary injunction restraining the defendants from interfering with the alleged possession of the petitioners. The burden is on the petitioners/ plaintiffs to prove that they had been in possession on the date of filing of the civil suit. The petitioners could have substantiated their claim that they are in possession of the suit fields by producing sufficient material on the record showing the details the crops they had been taking and by producing the documentary evidence in the nature of bills in respect of purchase of seeds, fertilizers and other material required for carrying out agricultural operations. The petitioners have not produced the receipts showing the transactions in respect of the agricultural produce. The petitioners have not produced any documentary evidence in support of their claim. The learned District Judge has rightly recorded in paragraph No.35 of the impugned order that the petitioners have failed to show *prima-facie* case in their favour. The findings recorded by the learned District Judge cannot be said to be illegal or perverse which requires interference by this Court in the extraordinary writ jurisdiction.

7. Mr. Kavimandan, the learned advocate has relied on the judgment given in the case of *M.V.S. Manikayala Rao Vs. M. Narasimhaswami*, reported in **AIR 1966 SC 470(1)** and has submitted that the defendants cannot oust the plaintiffs as the plaintiffs are the owners of the suit property. The submission as made on behalf of the petitioners, relying on the above mentioned judgment, cannot be considered at this stage. At this stage, the Court is required to examine the *prima-facie* case and the merits of the matter cannot be examined at this stage as the rights of the parties will have to

be determined after recording of the evidence and after the full trial of the civil suit.

8. In view of the above, I see no reason to interfere with the impugned order. The writ petition is dismissed with costs quantified at Rs.One Thousand to be paid by the petitioners to the respondent No.1.

The amount of costs shall be paid and the receipt shall be produced on the record of the civil suit before the trial Court within one month, failing which the learned trial Judge shall pass appropriate orders considering it to be non-compliance of the order passed by this Court.

JUDGE

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