

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

WRIT PETITION NO.5323 OF 2014.

(UTTAMRAO LAXMANRAO BAPAT..VS..GAJANAN DNYANESHWAR RAJGURE.)

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 : DECEMBER 11, 2015.

None appeared for the petitioner on 16th November, 2015. Today, again none appears for the petitioner. Heard Shri S.G.Loney, advocate for the respondent.

The respondent/ plaintiff has filed Regular Civil Suit No. 37 of 2011 praying for decree for declaration that he is the owner of the suit property and for decree for injunction restraining the petitioner/ defendant from entering the field and from taking forcible possession of the field. In this civil suit, the respondent / plaintiff filed an application praying for temporary injunction. The learned trial Judge, by the order dated 2nd May, 2014, allowed the application and granted temporary injunction restraining the defendant from disturbing the possession of the plaintiff over the suit field till decision of the civil suit. The petitioner, being aggrieved by the order passed by the trial Court had filed appeal before the District Judge which is dismissed by the impugned order. The learned trial Judge considered the documentary evidence on the record and recorded her findings in paragraph Nos. 6 and 7 as follows :

“6. As per contention of plaintiff he has purchased the suit filed from Anuj Nawandar by a registered sale deed dated 10.05.2011 and since then he is enjoying the peaceful possession of the suit field. Xerox copy of sale deed as well as xerox copies of mutation and 7/12 extract of suit field are filed on record. Sale deed contains that possession of suit field was given to the plaintiff on 10.05.2011 itself. Moreover, as per settled law the revenue entries has presumptive values unless the contrary is shown. Beside this on perusal of certified copy of application under Order 1 Rule 10 of CPC. Etc... filed by present plaintiff in RCS No.217/2007 (exh.98) and reply given thereon (exh.99) by the present defendant, it appears that present defendant admitted that Anuj Nawandar is owner of field S. No. 101/1 i.e. suit field, therefore the field purchased by applicant life present plaintiff has no concern with the suit field of RCS No. 217/2007.

7) It is pertinent to note here that in the judgment of Spl. Civil Suit No. 217/2007, filed by the present defendant, it is at length discussed by the Hon'ble Civil Judge Sr.Dn., Amrawati that the defendant Nos. 2 & 3 therein namely Bhaskarrao Raut and Vinod Raut were allotted field survey No.101/1 admeasuring area 1.18 H.R. i.e. the present suit field and possession thereof was also given to them. It is further held that Vinod Bhaskarrao Raut become the owner of above land. It is important to note here that as per the exh.98 (of Spl/Reg.C.S. No.217/2007) Bhaskarrao Raut and Vinod Raut sold survey No.101, admeasuring 1.18 H.R. to Anuj Nawandar who intern sold it to present plaintiff by registered sale deed dated 10.05.2011. In reply (exh.99 of RCS/Spl C.S. no. 217/2007) present defendant admitted the above sale transaction and ownership of Anuj Nawandar over the present suit field. As such considering the revenue as well as other documents filed on record by plaintiff, it is prima facie appears that plaintiff is in lawful possession of suit field. The defendant has no

right to interfere with the possession of plaintiff over the suit field. Therefore plaintiff have strong prima-facie case with balance of convenience in his favour. If the defendant is not restrained from the disturbing the possession of plaintiff will have to suffer irreparable loss. As such I have answered Point No. 1, 2, 3 in the affirmative.”

Though the learned District Judge has not dealt with the matter in depth, I seen no reason to interfere with his concurring order.

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

JUDGE

RRaut..