

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1543 OF 2016

Ganikhan S/o Nanhekhan

.. Petitioner

Versus

Gautam Bhanudas Dehede and others

.. Respondents

Shri Jayant R. Patil, Advocate for the Petitioner.

Shri R. M. Deshmukh, Advocate for Respondent Nos. 1 to 3.

CORAM : S. V. GANGAPURWALA, J.

DATE : 22ND MARCH, 2016.

PER COURT :

. Heard. Mr. Patil, the learned counsel for the petitioner submits that, the Court has erroneously rejected the application of the petitioner Exhibit 124. When the decree holder took the possession of the land, the panchanama was made. The valuation of standing crop was Rs. 35,000/-. The Court directed the decree holder to deposit Rs. 17,500/-. The evidence in the nature of panchanama in presence of parties is sufficient to hold that the petitioner is entitled for Rs. 35,000/-. The learned counsel submits that, the sugar cane crop and the cotton crop in 5 Guntha and 25 Guntha respectively was very much standing. As such, the petitioner is entitled for amount of Rs. 35,000/-.

2. Mr. Deshmukh, the learned counsel submits that, the petitioner was illegally occupying the suit property. There was restrain order, still he cultivated the land. The learned counsel submits that, at the time of giving possession to the decree holder, the crops were not ripe for harvesting. Subsequently because of lack of rain the cotton crop as well as sugar cane crop could not be harvested. As such, the decree holder has not derived any benefit of the said crop. The Trial Court has rightly considered that, it was the petitioner who was illegally occupying the land. The order of restrain was upto 19.06.2013 and thereafter immediately warrant of possession was issued below Exhibit 84. It is the petitioner who avoided execution of the warrant. According to the learned counsel, the impugned order is rightly passed.

3. I have considered the submissions. The Trial Court has observed that, the restrain order was upto 19.06.2013. There is nothing on record to show that, after 19.06.2016 the restrain order was continued. The possession panchnama, which is in presence of parties clearly shows standing crops. The valuation was made of Rs. 35,000/-. There cannot be any doubt that, the present petitioner/judgment debtor had sown cotton and the possession was taken by the decree holder along with standing crop. Considering the above, the petitioner would be entitled for the amount. However, the valuation made at the time of

panchanama was an approximately valuation. The decree holder has submitted that because of lack of water, the crops were not harvested. Even if the said aspect is considered I would given benefit to the extent of 50% to the decree holder.

4. Considering the above, I pass the following order.

5. Order below application Exhibit No. 124 is quashed and set aside. The writ petition is partly allowed. The petitioner is entitled to withdraw Rs. 17,500/- (Rs. Seventeen thousands Five hundred only) deposited by the decree holder. However, the remaining prayer of the petitioner for withdrawal/payment of additional amount of Rs. 17,500/- is rejected. The writ petition accordingly is disposed of. No costs.

[S. V. GANGAPURWALA, J.]