

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

97 WRIT PETITION NO. 6765 OF 2016

ANKUSH VILASRAO TAUR AND OTHERS
VERSUS
SANDIPAN MHASU GAIKWAD

Shri. R.M. Deshmukh, Advocate, for petitioners.

Shri. Rahul D. Khadap, Advocate, for respondent.

CORAM: T.V. NALAWADE, J.

DATE : 3 OCTOBER 2016

ORDER:

1) The petition is filed to challenge the order made by the District Court on Exhibit 5 in Regular Civil Appeal No.47/2016 presently pending in the District Court, Jalna. Both the sides are heard.

2) Regular Civil Suit No.166/2011 was filed by the present respondent for the relief of injunction. The suit land is allotted to the plaintiff by the Government as he is a project affected person and for rehabilitation the land is allotted to him. The land was given in possession of the plaintiff on 2-11-2011. The mutation was effected on the basis of allotment on 4-11-2010. His name is shown in the

revenue record like 7/12 extract in ownership and cultivation column and on the date of the suit also his name was there.

3) On the other hand, it is the case of the present petitioner, defendant, that under agreement of sale the possession of this land was given to him by the plaintiff on 25-8-2009. It is also contended that there was separate agreement of lease also of 99 years executed by the plaintiff in his favour and so under that agreement also the defendant is in possession.

4) Before the trial Court no steps were taken to prove the so called agreement sale or the so called lease document. Admittedly the agreement of sale in which possession was shown to be given was not registered and requisite stamp duty was not paid under the Stamp Act. Similarly, the alleged lease deed was also not registered and requisite stamp duty was not paid. In view of these circumstances the trial Court could not have considered these documents in evidence though no attempt was made to prove those documents.

5) The scope of the suit was limited as it was only for relief of injunction and on the basis of aforesaid record the trial Court decreed the suit for injunction in favour of the plaintiff. Learned counsel for the petitioners submitted that temporary injunction was not granted in favour of the plaintiff and the said application was rejected and this circumstance is sufficient to infer that the defendants were in possession. He submitted that till the suit was decreed, there was no relief of temporary nature in favour of the plaintiff and in view of these circumstances the District Court ought to have granted stay to the decree of perpetual injunction. This submission is not acceptable in view of the aforesaid record. Though the trial Court had not granted temporary injunction it was not possible to the District Court to grant stay to the decree of injunction given in favour of the plaintiff due to aforesaid record and the circumstances. Learned counsel for the petitioners submitted that this Court has granted order of interim nature dated 4-7-2016 and the defendants have sown jawar crop in the land and the defendants will be dispossessed due to the decree of injunction and so they need to be protected by giving interim relief like stay. This

submission is not acceptable. Only because of that circumstance, the interim order dated 4-7-2016 cannot be continued. There is record of aforesaid nature for consideration.

6) Learned counsel for the petitioners submitted that the appeal before the District Court can be expedited and till disposal of the appeal stay can be granted. This submission is also not acceptable. However, the appeal can be expedited provided that the appellants take steps like preparation of paper book and then argue the matter before the District Court. Considering the aforesaid circumstances the District Court can dispense with few things and decide the appeal itself. Thus, there is no need to interfere in the order made by the District Court by which stay is refused. The petition stands dismissed. Interim relief, if any, is vacated. The District Court is expected to expedite the appeal and in any case within six months from the date of receipt of this order.

Sd/-
(T.V. NALAWADE, J.)

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