

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

Office Notes, Office Memoranda of Coram, appearance, Court's orders or directions and Registrar's orders.	Court's or Judge's orders.
---	----------------------------

APEAL FROM ORDER NO. 107 OF 2015
WITH CA/15510/2015 IN AO/107/2015

JANARDAN RAMBHAU SURULE DIED THROUGH LRS SANTOSH
JANARDAN SURULE AND OTHERS
VERSUS
RAMESH GANESHLAL KASLIWAL AND OTHERS

Advocate for Petitioners : Mr. Deelip L. Khivesara.
Advocate for Respondent Nos.1 to 4: Mr. A. D. Kasliwal.

CORAM : T. V. NALAWADE, J.
DATED : 5th JANUARY, 2016.

PER COURT:

1. The proceeding is filed to challenge the order made on Exhibit-9 in Regular Civil Appeal No.8 of 2015 by District Court, Aurangabad. The application filed for relief of temporary injunction is rejected by the District Court. Both the sides are heard.
2. Regular Civil Suit No.23 of 2002 was filed by present

Appellants against the respondent for relief of injunction. It was in respect of land Gat No.160/1 situated at village Nandar Tahsil Paithan. Area of the land is 7 Acre 10 Guntha. It is the case of Appellants, plaintiffs that one Biharilal Kanhaiyalal was the owner of the land and Smt. Prayagbai, mother of plaintiffs, was cultivating this land. It is contended that the possession of the family of plaintiffs over the land is of more than 50 years. The defendants are successors of aforesaid Biharilal. It is the case of plaintiffs that behind their back the entries in the Revenue Record made in their favour were deleted and so the cause of action took place for the suit.

3. It is the case of defendants that the old number of the property was Survey No.100 and the land was owned by Biharilal. After consolidation of the lands the number was changed and new number was given as Gat No.161. It is contended that father of plaintiff viz. Rambhau was protected tenant of two lands viz. Survey Nos.99 and 100. It is contended that the area of 23 Acres 36 Gunthas given to Rambhau under Tenancy Act and remaining area of 7 Acres 10 Gunthas, the suit property, was surrendered by

Rambhau to the landlord. It is contended that due to the surrender, there was no right to keep possession of area of 7 Acres 10 Gunthas to Rambhau and accordingly the possession was given to the landlord. It is the case of defendants that though there was tenancy proceeding of surrender of the rights, the name of the family of plaintiff was continued in Revenue Record and plaintiff is trying to misuse that circumstance.

4. Both the sides produced some record which include the record of surrender proceeding and the 7/12 extracts. It appears that no relief of interim injunction was claimed when the suit was filed in the year 2002 and ultimately the suit was dismissed on merits on 29th November, 2014. Regular Civil Appeal No.8 of 2015 came to be filed on 11th June, 2015 and in the appeal first time in an application, Exhibit-9 relief of temporary injunction was sought by the plaintiff. The first Appellate Court has rejected the application by considering the aforesaid record. The submissions made show that after the dismissal of the aforesaid suit of present Appellants, present Respondents filed Regular Civil Suit No.201 of 2015 for relief of injunction

and by the order dated 24th June, 2015 ex-parte ad-interim injunction is granted in favour of present Respondents. In Regular Civil Suit No.23 of 2002 a finding is given by the Civil Court against the Appellants that they are not in possession of the suit property. The District Court has considered these circumstances and has held that there is no case to grant temporary injunction.

5. The learned counsel for the Appellants placed reliance on a case reported as **1975 Mah.L.J. (SC) 515(Ramchandra Keshav Adke (Dead) by Legal Representatives V/s Govind Joti Chavare and others)**. He submitted that the surrender proceeding was not properly conducted and there was one member like younger brother of the person who had made application for surrender and so the order made in surrender proceeding under Tenancy Act cannot be used. This Court has carefully gone through the observations made by the Apex Court in the aforesaid case. The proceeding was altogether of different nature. It was a tenancy proceeding. When a suit is filed for the relief of injunction,

the Civil Court is primarily required to consider the factum of possession.

6. This Court has carefully gone through the record, which includes copy of application given by Janardhan Rambhau, original plaintiff of Suit No.23 of 2002. He had surrendered the land as 24 Acres land had come to his father under provision of Section 38-E of Hyderabad Tenancy Act. It was verified by the Tenancy Court and statement was recorded. Admittedly, order was made by Tenancy Court and then the record of possession was created. There is copy of Panchanama showing that on 16th September, 1971 the possession of suit property was actually handed over to the land lord Biharilal.

7. It appears that in the revenue record the name of Rambhau was continued as protected tenant in other rights column and name of his widow Prayagbai was continued in crop cultivation column. The Courts below have observed that there is possibility that the entry remained there even after the surrender of the land made by the tenant in aforesaid tenancy proceeding. By making such observations the relief of injunction is refused by

District Court. It is discretionary relief.

8. The suit was filed in the year 2002 but till the year 2015 the plaintiffs never felt it necessary to claim relief of temporary injunction. No such relief was granted in their favour during all these years. These circumstances go long way against the plaintiff. There is no explanation to the aforesaid record of tenancy Court. It can be said that no right as such was left in view of the aforesaid record to Rambhau in the suit property. Now, there is decree in injunction suit against the Appellants. In view of these circumstances, this Court holds that it is not possible to grant relief of temporary injunction. The District Court has not committed any error in refusing the relief.

9. In the result, the appeal stands dismissed.

10. In view of final disposal of the appeal, nothing further survives in the civil application and the same stands disposed of accordingly.

(T. V. NALAWADE, J.)

Dt.05/01/2016.
ans/107