

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 48 OF 2016**

Maruti Bhiku Nakadi

..Petitioner

Vs

Bharmu Narayan Gavada @ Patil

.. Respondent

Mr. S. R. Ganbavale a/w Mr. Abhijeet B. Desai, Advocate for Petitioner.

Mr. G.N.Salunki, Advocate for Respondent.

CORAM : R.G.KETKAR,J.

DATE : 06/01/2016

**PC:**

1. Heard Mr. S.R.Ganbavale, learned counsel for the petitioner and Mr.G.N.Salunki, learned counsel for the respondent at length.
2. By this petition under Article 227 of the Constitution of India, original defendant has challenged the Judgment and order dated 31.3.2015 passed by the learned Civil Judge, Jr. Dn., Chandgad, below Exhibit-5 in Regular Civil Suit No.10 of 2013 as also the Judgment and order dated 23.7.2015 passed by the learned District Judge-1, Gadhinglaj in Misc. Civil Appeal No.15 of 2015. By these orders, the Courts below allowed the application filed by the respondent, hereinafter referred to as 'plaintiff', and issued injunction restraining the petitioner, hereinafter referred to as 'defendant', from obstructing the plaintiff's possession over an area of 37.7 Ares, out of 1 Hecter and 17 Ares of Gat No.103

situate at Mouze Dhekoli, Taluka Chandgad, District Kolhapur (for short, 'suit land').

3. Mr. Ganbavale submitted that the description given in paragraph 1 of the plaint itself is faulty. He submitted that the suit land originally belongs to the plaintiff. He was unable to cultivate the suit land and, therefore, it was leased out to the defendant in the month of March 1975 on rental basis of Rs.500/- per annum. The defendant was actually put in possession of the suit land as a tenant since 1975. Subsequently, on 10.9.1980 the plaintiff agreed to sell the suit land for a consideration of Rs.1100/-. He further submitted that right from 1975 the defendant's name appears in column of 'cultivation'. The defendant had also cultivated sugarcane crop in the suit land and had supplied the same to sugar factory. He, therefore, submitted that the Courts below were not justified in allowing the application filed by the plaintiff.

4. On the other hand, Mr. Salunke supported the impugned orders. He submitted that the Courts below, after considering the material on record, concurrently held that the plaintiff is in possession. He has invited my attention to the trial Court's finding in paragraph 11 wherein the learned trial Judge has recorded a prima facie finding about interpolation in the 7/12 Extracts in respect of crop cultivation column during the periods

1975-76 to 1978-79. In paragraph 12, the learned trial Judge, after considering the material on record, held that the defendant has not established his possession over the suit land.

5. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. As noted earlier, the defendant claims that the plaintiff inducted him in 1975. However, prima facie, no registered lease deed is produced. Secondly, the defendant claims that the plaintiff agreed to sell the suit land on 10.9.1980 by executing Agreement of Sale. Perusal of the Agreement of Sale prima facie does not indicate that it confirmed possession of the defendant in the suit land. The learned trial Judge has prima facie recorded finding in paragraph 11 that there is interpolation in the 7/12 Extracts. The order passed by the learned trial Court is confirmed by the Appellate Court. Thus, both the Courts below after considering the material on record have, prima facie, held that the plaintiff has established possession over the suit land. In view thereof, no case is made for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

6. The defendant is at liberty to apply for deciding the suit in a time bound manner. If such application is made, the learned trial Judge will pass appropriate order. It is expressly made clear

that the observations made herein are tentative and prima facie and are made only for the purpose of considering correctness of the impugned orders. The learned trial Judge will decide the suit on the basis of evidence on record and on its own merits in accordance with law uninfluenced by the observations made herein. Order accordingly.

(R.G.KETKAR, J.)