

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 9845 OF 2016

Shri Subhash Sheti Pawar

... Petitioner

v/s

Sou.Minakshi Ravindra Zadbuke

... Respondent

Mr.Ajay Joshi for the petitioner.

Mr.s.P.Rajepandare i/by Lalasaheb Bandal for Resp. Nos.1 to 4.

Coram: N.M. Jamdar, J.

Dated: 1 SEPTEMBER 2016

ORAL ORDER:

Not on board. Taken on production board in view of the *praecipe* filed by the Petitioner.

2 By this petition, the Petitioner challenges the order passed by the District Judge, Pandharpur, dated 2 July 2016, wherein the learned District Judge has granted permission to lead additional evidence only on the issue of possession. Pursuant to this order, the learned District Judge has also issued witness summons. Learned counsel for the Petitioner submitted that, in the facts and circumstances of this case, the exercise of jurisdiction by the learned

District Judge is entirely unwarranted. He submitted that the foundation has not been established to exercise the jurisdiction and the power exercised by the learned District Judge in granting such permission without there being documents on record and contrary to the orders passed by this Court, is not permitted.

3 The scope of Article 227 of the Constitution of India in respect of interference with the interlocutory orders, is well settled. Unless grave prejudice is occasioned by interlocutory orders or there is abuse of procedure, this Court does not exercise this jurisdiction. In this case, the issue of grant of temporary injunction had reached this Court earlier in Appeal from Order No. 804 of 2015. Though the learned Single Judge vacated the order passed by the learned District Judge in respect of grant of injunction, the learned Single Judge observed as under :

'Considering all these aspects and prima facie balancing evidence, I am of the view that, at this stage, it is difficult to ascertain who is in actual physical possession of the suit lands. The parties are required to produce documentary evidence, if available, for adjudication of the issue.'

The learned Single Judge, after considering the matter in detail, made the above observation, which clearly indicates that evidence needs to be led and it needs to be ascertain as to who is in actual physical possession of the suit land, so that the dispute is put to an

end. In furtherance of this endeavour, the learned District Judge has passed the impugned order. It cannot be therefore said that the exercise of the jurisdiction is perverse. As regard the documents that would be produced pursuant to the impugned order, it is always open to the Petitioner to contest their admissibility and evidentiary value. Keeping all the contentions open in that regard, the writ petition is rejected.

(N. M. Jamdar, J.)