

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.3422 OF 2015
SHRI SHALIK LAHU BARSAGADE AND OTHERS
VS
SHRI SURYABHAN RAMCHANDRA GOSAWI

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Vishal Anand, Advocate for the petitioners.
Shri A. M. Quazi, Advocate for the respondent.

CORAM : A.S. CHANDURKAR, J.
DATED : AUGUST 03, 2016.

The challenge in the present writ petition is to the order of the Appellate Court dated 27-2-2015 by which the miscellaneous appeal preferred by the original plaintiff has been allowed and an order of temporary injunction has been granted which is to operate during pendency of the suit.

The respondent is the original plaintiff who has filed suit for declaration of his title and for permanent injunction with regard to field bearing Nos.848 and 849.

According to him, the defendants/petitioners on the basis of an alleged agreement dated 27-5-1986 executed by the father of the plaintiff were trying to disturb his possession. In the said suit, an application for temporary injunction came to be filed. The trial Court by order dated 26-8-2014 rejected the said application by observing that the defendants were in possession of the land in question. The appellate Court, however, set aside that order and held that it was the plaintiff who was in possession of the suit property.

Shri Vishal Anand, the learned Counsel for the petitioner submitted that the petitioners were put in

possession of the suit field when the agreement was entered into on 27-5-1986. According to him, possession of the petitioners was uninterrupted and the same could also be found from the 7/12 Extracts of the year 2012-13. He, therefore, submitted that the appellate Court was not justified in reversing the order passed by the trial Court.

Shri A. M. Quazi, the learned Counsel for the respondent submitted that the respondent was in possession of the suit field as the same was never handed over to the petitioners. He submitted that except the solitary entry in the revenue records of the year 2012-2013, there was no other document showing the possession of the petitioners. He, therefore, submitted that the appellate Court rightly granted injunction in favour of the respondent.

After hearing the respective Counsel for the parties, I do not find that the appellate Court committed any error in allowing the appeal filed by the respondent. Though it was the case of the petitioners that they were put in possession after the agreement dated 27-5-1986 was entered into, there are no such recitals in that regard in the agreement. After 1986 till 2013, there is no document showing possession of the petitioners. The only document relied upon is the 7/12 Extracts for the year 2012-2013 showing the names of the petitioners as well as the respondent. Merely on the basis of this solitary entry, it cannot be said that the conclusion arrived at by the appellate Court was illegal.

In view of aforesaid, I do not find any case made out to interfere in writ jurisdiction. It is however clarified that the findings recorded by the appellate Court and confirmed by this Court shall not come in the way of the parties when the suit is finally decided.

The writ petition stands dismissed with no order
as to costs.

JUDGE

/MULEY/

C E R T I F I C A T E

“ I certify that this Order uploaded is a true and correct copy of original signed Order.”

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Personal Assistant.

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