

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

WRIT PETITION NO.3433/2015

Jamilkha Chhotekhan
...Versus...
Smt. Baby Pralhad Raut and others

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

Court's or Judge's orders

CORAM : SMT. VASANTI A NAIK, J.
DATE : 10.10.2016

By this writ petition, the petitioner challenges the judgment of the first appellate Court, dated 12.9.2014 allowing the appeal filed by the respondent nos.3 to 6 and restraining the petitioner from disturbing the possession of the respondent nos.3 to 6 on the suit property.

The petitioner is the original plaintiff. The petitioner had filed a suit for specific performance of contract. According to the petitioner, the original defendants had agreed to sell the suit land to the petitioner by the agreement of sale dated 17.8.2011. The respondent nos.3 to 6 – defendant nos.3 to 6 filed their written statement and denied the claim of the petitioner. The agreement of sale dated 17.8.2011 was also denied. The respondent nos.3 to 6 – defendant nos.3 to 6 filed a counterclaim, claiming permanent injunction restraining the plaintiff – petitioner from entering into the suit land. Along with the counterclaim, an application for temporary injunction was also

filed. The trial Court rejected the application filed by the respondent nos.3 to 6 – defendant nos.3 to 6 for temporary injunction. The first appellate Court allowed the appeal filed by the respondent nos.3 to 6 and restrained the petitioner from interfering with the possession of the respondent nos.3 to 6 on the suit land. The judgment of the first appellate Court is impugned by the petitioner in the instant petition.

On a perusal of the petition and the impugned judgment, it appears that there is no scope for interference with the impugned judgment in exercise of the writ jurisdiction. Though the impugned judgment was passed on 12.9.2014, the writ petition was belatedly filed on 8.5.2015. The first appellate Court held that besides the agreement of sale, there was no other document showing the delivery of possession of the suit property in favour of the petitioner. The first appellate Court found that the agreement of sale was neither registered nor was executed with proper stamp duty. There was no mutation of the name of the petitioner – plaintiff in the 7/12 extract. The first appellate Court held that the 7/12 extract did not disclose the possession of the plaintiff-petitioner and the same showed that Bebytai, the respondent no.1 was in possession of the suit property. The first appellate Court found that since the respondent nos.3 to 6 were holding the possession through the respondent no.1 – Bebytai, irreparable loss would be caused to them, if their possession was disturbed by the plaintiff – petitioner. The first appellate Court held and rightly so, that since the respondent nos.3 to 6 – defendant nos.3 to 6 had filed a counterclaim, they were entitled to file an application for temporary injunction, as their counterclaim would be in the nature of a suit. The findings

recorded by the first appellate Court are pure findings of facts which cannot be lightly interfered with, in exercise of the writ jurisdiction. Though more than two years have lapsed from the date of the impugned judgment, the petitioner had not taken steps to circulate the matter for admission and interim orders, with the result, the impugned judgment was operating for a period of more than two years.

Since no fault can be found in the impugned judgment, the writ petition is dismissed with no order as to costs.

JUDGE

Wadkar

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.

Uploaded by : S.S. Wadkar, P.S.

Uploaded on : 14/10/2016