

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

**WRIT PETITION NO.4340/2016**

Bhagwan S/o Maroti Bhoyar and others

..VS..

Manohar s/o Shivram Bhoyar and others

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

**CORAM : Z.A.HAQ, J.**

**DATED : 10.8.2016.**

Heard Shri Rohit Joshi, Advocate for the petitioners - original defendant Nos.1 to 3 and Shri P.J. Mehta, Advocate for the respondent Nos.1 and 2 - original plaintiffs.

The plaintiffs filed civil suit praying for decree for declaration that the plaintiffs are owners of suit land and for decree for permanent injunction restraining the defendants from causing obstruction to the possession of the plaintiffs over the suit land. The plaintiffs prayed for other reliefs also. The plaintiffs filed an application praying for temporary injunction restraining the defendants from causing obstruction to the possession of the plaintiffs over the suit land, during the pendency of the civil suit. The learned trial Judge, by the order dated 25<sup>th</sup> February, 2016 rejected the application filed by the plaintiffs. This order was challenged by the plaintiffs in appeal before the District Court which is allowed by the impugned judgment.

The learned District Judge has relied on the entries in 7/12 extracts showing the plaintiffs as the owners

and possessors of the suit land. The submission on behalf of the petitioners - defendants is that the plaintiffs claimed to be in possession of the suit land on the basis of partition which is disbelieved by the trial Court. According to the defendants, the entries in 7/12 extracts showing the names of the plaintiffs were challenged in appeal and the Sub-Divisional Officer by the order dated 30<sup>th</sup> November, 1987 had allowed the appeal filed by the defendants and the entries in 7/12 extracts were directed to be corrected, however, the entries are not corrected and 7/12 extracts continue to reflect the names of the petitioners, of which undue advantage is being taken by the plaintiffs. It is submitted that the trial Court has rightly considered the pleadings of the parties and the documents produced on record were also considered in the light of the pleadings made in the application filed by the respondents and the learned District Judge has committed an error in setting aside the order passed by the trial Court by re-appreciating the evidence and taking a different view without there being any consideration that the view taken by the trial Court was not a possible view. To support the submissions, the learned Advocate has relied on the judgment given in the case of *Wander Ltd. and another V/s. Antoz India P. Ltd.* reported in **1990 (Supp) SCC 727**.

After examining the matter, I find that except for the entries in 7/12 extracts and the admitted relationship between the parties, there is nothing on record from either side to show who is in possession of the suit land. Thus, the entries in 7/12 extracts assume importance. Though the order passed by the Sub-Divisional Officer on 30<sup>th</sup> November, 1987 supports the contention of the petitioners - defendants, the fact remains that even after the order passed by the Sub-Divisional Officer in 1987, the names of the plaintiffs are

reflected in 7/12 extracts till 2014. While considering the prayer for grant of temporary injunction, the Court is required to examine as to who is in settled possession of the suit property at the time of filing of the suit. In this background, it cannot be said that the learned District Judge has committed any error in reversing the findings recorded by the trial Court. The entries showing the names of the plaintiffs in 7/12 extracts for about 26 - 27 years after the passing of the order by the Sub-Divisional Officer will have to be given due weightage which the trial Court had not given. In the facts of the present case, the judgment relied upon by the Advocate for the petitioners does not assist the petitioners.

I do not find any patent illegality or perversity in the impugned order which necessitates the interference by this Court in the extra-ordinary jurisdiction. The petition is **dismissed**. In the circumstance, the parties to bear their own costs.

JUDGE

CERTIFICATE

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

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