

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2607 OF 2015

Ramesh Chandarsing Padwale
Age: 39 years, Occu.: Agri.,
R/o Sawargaon Tanda, Tq. Kindwat,
Dist. Nanded.

..PETITIONER

VERSUS

1. Krishnabai Laxman Kandalwad
Age: 65 years, Occu.: Agri.,
R/o Sawargaon, Tq. Kinwat,
Dist. Nanded.
2. Venkati Laxman Kandalwad
Age: 54 years, Occu.: Agri.,
R/o Sawargaon, Tq. Kinwat,
Dist. Nanded.
3. Deorao Laxman Kandalwad
Age: 46 years, Occu.: Agri.,
R/o Sawargaon, Tq. Kinwat,
Dist. Nanded.
4. Gangabai Tukaram Borewad
Age: 52 years, Occu.: Agri.,
R/o Sawargaon, Tq. Kinwat,
Dist. Nanded.
5. Kausalyabai Gangadhar Pasamwad
Age: 44 years, Occu.: Agri.,
R/o Sawargaon, Tq. Kinwat,
Dist. Nanded.
6. Shantabai Vijaykumar Kalyanwad
Age: 47 years, Occu.: Agri.,
R/o Sawargaon, Tq. Kinwat,
Dist. Nanded.

7. Nilabai Nagorao Pasamwad
Age: 44 years, Occu.: Agri.,
R/o Sawargaon, Tq. Kinwat,
Dist. Nanded.

..RESPONDENTS

....
Mr. D.J. Choudhary, Advocate for petitioner.
Mr. A.A. Mukhedkar, Advocate for Respondent No.2.

....

CORAM : S.B. SHUKRE, J.
DATED : 20th MARCH, 2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally by consent of both sides.

2. This writ petition challenges the legality and correctness of the order passed below Exhibit 5 in Regular Civil Appeal No. 167 of 2014 by the learned Principal District Judge, Nanded thereby quashing and setting aside the execution and operation of the decree passed in Regular Civil Suit No. 16 of 2002 by the learned Joint Civil Judge, Junior Division, Kinwat. By the impugned order, the learned Principal District Judge directed both the parties to maintain status-quo in respect of possession over the suit land till final disposal of the appeal.

3. Such direction, by the learned Principal District Judge, according to the learned Counsel for petitioner is perverse and arbitrary and it is to

obstruct the possession of the petitioner. This is, however, disputed by the learned Counsel for respondents. He submits that the decree could not have been passed against the deceased Respondent No.1 and therefore the decree itself is illegal.

4. So far as passing of decree against the dead person is concerned, it is the submission of learned Counsel for the petitioner that deceased Respondent No.1 has been duly represented by the legal heirs who are Respondent Nos. 2 to 7. In any case, the challenge involved in this petition is in respect of finding of fact, resulting in a direction to maintain status-quo and therefore, that objection at this stage, in the absence of any finding recorded by the First Appellate Court, cannot be considered.

5. It is seen from the impugned order that the only ground on which it has been passed is that the respondents do not press their application for grant of temporary injunction and no other reason is recorded by the learned Principal District Judge while passing the impugned order. It is an admitted fact that the application for grant of temporary injunction was not pressed by the original plaintiff without assigning any reason and if this is so, the learned Principal District Judge could not have made the ground of non-pressing of application for temporary injunction as the basis for passing

the impugned order.

6. It appears that the learned Principal District Judge has made an assumption that because the application for grant of temporary injunction was not pressed, the original plaintiff had no case in her favour. There could have been other reasons as well for not pressing of such an application. One of those reasons could have been that at the relevant time, the original plaintiff may not have felt any threat to her possession from the defendants. Thus, in the instant case, non pressing of application for temporary injunction could have been hardly any ground for passing of the impugned order.

7. Apart from the aforesaid ground, there is no other reason given by the Principal District Judge in the impugned order. The learned Principal District Judge has not considered the admissions given by the original Defendant No.1 as well as the other defendants, particularly Respondent Nos. 4 to 7, regarding handing over possession of the suit land to the petitioner. These documents are at Exhibits 30 and 31. Learned Counsel for respondents submits that there is 7/12 extract (Exhibit 32) which shows respondents to be in possession of the suit land. However, on going through the judgment and order of the Trial Court, I find that these documents only show ownership of the original Defendant No.1. Thus, the impugned order

does not consider relevant material available on record and has been passed on wholly irrelevant consideration and therefore it is perverse.

8. The writ petition is, therefore, partly allowed with costs. The impugned order is hereby quashed and set aside only to the extent of directing the parties to maintain status-quo till final disposal of the appeal and the impugned order to the extent of directing the parties to maintain status-quo is hereby quashed and set aside. It is further made clear that the order staying the execution of decree of specific performance has not been examined for its correctness in the present order. Rule made absolute in these terms. It is made clear that all questions are kept open and learned Principal District Judge shall not be influenced by the observations made in this order.

(S.B. SHUKRE, J.)

SSD