

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

WRIT PETITION NO. 10382 OF 2013

Vishwatmak Jngli Maharaj Trust
Kokamthan
Through its Secretary
Shri Hanumantrao Bhaguji Bhongle
age 60 years, occ. Agriculture
r/o Jeur Kumbhari, Tq. Kopargaon
Dist. Ahmednagar

.. PETITIONER

VERSUS

1. Champalal Motilal Gangwal
age 87 years, occ. Agriculture
2. Dilipkumar Champalal Gangwal
age 57 years, occ. Agriculture
3. Mrs. Gunmala Dilipkumar Gangwal
age 48 years, occ. Agriculture

R. Nos. 1 to 3 r/o Kokamthan
Tq. Kopargaon, Dist. Ahmednagar

4. Suyog Subhash Jape
age 26 years, occ. Agriculture
5. Subhash Kacheshwar Jape
age 46 years, occ. Agriculture

R. Nos. 4 and 5 r/o Tinchari
Kokamthan, Tq. Kopargaon
Dist. Ahmednagar

.. RESPONDENTS

Mr. V.D. Hon, Senior counsel instructed by Mr. A.V. Hon, advocate for petitioner.

Mr. P.M. Shah, Senior Counsel instructed by Mr. Girish Rane, advocate for respondent nos. 1 to 3.

Mr. A.D. Shinde, advocate for respondent nos. 4 and 5.

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CORAM : S. B. SHUKRE, J.

DATE : 9th FEBRUARY, 2017.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith.

2. Heard finally by consent of learned counsel for the respective parties.

3. By this writ petition, exception has been taken to the order dated 7th February, 2013, passed in Misc. Civil Appeal No. 41/2013 by the District Judge – 1, Kopargaon, thereby granting interim protection in the nature of prayers made in applications vide Exh. 42 and 51.

4. In a suit filed by respondent nos. 1 to 3 against respondent nos. 4, 5 and the petitioner (original defendants) claiming perpetual injunction and removal of encroachment against respondents 4 and 5 as well as petitioner, respondent nos. 1 to 3, original plaintiffs, also filed two applications praying for grant of certain interim protection. These measures were in the nature of restrain orders to be issued against original defendants that they shall not lay any compound or fencing around the suit property being gat no. 334/3 situate at Kokamthan, Tq. Kopargaon, Dist. Ahmednagar, admeasuring 97 R. Another order was sought to the effect that defendants be prohibited from digging pits for erecting fencing.

5. These applications, on merit of the case, were rejected by the trial Court by impugned order passed on 28th June, 2013. The order was carried in appeal before the learned District Judge being Misc. Civil Appeal no. 41/2013, and, in this appeal, the learned District Judge found that defacto possession of the suit property was with original plaintiffs and, therefore, by order passed on 7th December, 2013, the learned District Judge set aside the order of the trial Court and, allowed the applications vide Exh. 42 and 51.

6. I have gone through the impugned order passed by the learned District Judge and also various documents forming part of the paper book of this petition with the assistance of learned counsel for the respective parties. One fact which comes forth in this case is that while the trial Court considered material documents especially the 7/12 extract and the report of the Court Commissioner with rough map annexed to it, the document namely 7/12 extract has not been considered by the learned District Judge in recording his finding regarding possession. Of course, he has considered the report of the Court Commissioner, but again, such consideration appears to be quite insufficient as the learned District Judge has not referred to some of the material facts of the report, particularly, the fact that at the time of commission, defendants had stated that standing crop in the land shown as in possession of defendants, was owned by the defendants and original plaintiffs did not raise any objection to this statement. Revenue document like 7/12 extract is an important document for the purpose of ascertaining prima facie possession of the parties and thus, demands its due consideration by civil Courts in disputes like the present.

7. It is the contention of Mr. P.M. Shah, learned Senior Counsel for respondent nos. 1 to 3 that as per the sale-deed dated 16.06.2010, the physical possession was with plaintiffs and, the trial Court did not ascertain, in a prima facie manner, the date on which original defendants came into possession of the suit property. He submits that the suit was filed in December 2010 and it is unlikely that during the period of six months i.e. from June 2010 to December 2010, plaintiffs lost their

possession to original defendant no. 3, who is the petitioner in this case. According to him, it has therefore, to be accepted that original plaintiffs never lost possession of the suit property. I would only say that these arguments require appropriate consideration and since no consideration in respect of this aspect of the case in the light of recitals in the sale-deed dated 16.06.2010 and also 7/12 extract dated 05.04.2011, prima facie showing possession in favour of original defendant nos. 1 and 2 in the year 2010-2011 has been made, it would be obvious that the impugned order passed by the learned District Judge could not be sustained in the eye of law. Therefore, the impugned order would have to be termed as perverse and arbitrary in the light of these observations.

8. In the result, this is a fit case for interfering in the impugned order and remanding the matter back to the District Court for adjudication in accordance with law. Petition is accordingly allowed with costs. Impugned order is quashed and set aside. The matter is remanded back to the District Court for fresh consideration of the appeal. It shall be disposed of as expeditiously as possible and, preferably, within a period of three months from the date of the order. The District Court shall not be influenced by the observations made in this order. Rule made absolute in above terms.

(S. B. SHUKRE)
JUDGE