

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

948. WRIT PETITION No. 9458 of 2012

Appasaheb S/o Bhimrao Pawar,
age 45 years occupation agriculture
R/o Yedashi Taluka and District Osmanabad Petitioner

Versus

1. Laxmi W/o Mahadeo Kambale
age 46 years occupation agriculture & household
R/o Yedashi Taluka and Dist. Osmanabad
2. Nilkanth S/o Rama Shinde,
age 69 years occupation agriculture
R/o as above. ... Respondents

Mr. B.R. Kedar, Advocate for respondent No.1
Mr. S.A. Wakure, Advocate for respondent No.2

Coram : N.M. Jamdar, J.

Date : 24 November 2018.

ORAL ORDER:

1. By this petition, the petitioner has challenged the

judgment and order passed in Misc. Civil Appeal No. 5 of 2012 by the learned District Judge-1, Osmanabad, dated 13 September 2012, allowing the appeal filed by respondent No.1/plaintiff and granting temporary injunction. The writ petition is pending for admission since the year 2012.

2. Heard the learned Counsel for the parties.

3. The learned Counsel for the petitioner submitted that the learned Trial Judge has rightly refused to grant temporary injunction and the learned District Judge without considering legality of the documents in favour of the respondent/plaintiff has granted order of injunction. The learned Counsel for the petitioner submitted that the respondent/plaintiff had not produced any document in his favour. He also contended that mutation entry in favour of the respondent/plaintiff has been cancelled by the authority.

4. Having gone through the orders passed by the learned Civil Judge and the learned District Judge, it appears that the learned Civil Judge has primarily relied upon the validity of the documents in favour of the respondent/plaintiff. The learned Civil Judge referred to the documents produced by the respondent/plaintiff, such as, the 7/12

extracts, application for loan, the maps, copy of the order passed in another suit. But the learned Civil Judge did not accept these documents on the ground that the sale deed executed in favour of the respondent/plaintiff is not legal. The learned District Judge in appeal filed by the respondent/plaintiff held that legality of the sale deed cannot be the only criteria and what also needs to be considered is that whether the respondent/plaintiff is in settled possession. The learned District Judge noted that the respondent/plaintiff is in possession since the year 2005 which needs to be protected.

5. The thrust of the petitioner is also in respect of the agreement executed in his favour in the year 2002. The learned Counsel for the petitioner also contended that there is an affidavit by the neighbour. Therefore, before the Court the respondent No.1 had produced a sale deed of the year 2005, the documents, such as, tractor loan transaction, 7/12 extracts and the petitioner had produced his own agreement of the year 2002. The learned District Judge, who is the final fact finding authority, has recorded a prima facie finding that the respondent/plaintiff is in possession. If this finding is to be treated as perverse and interfered with in limited jurisdiction under Article 227 of the Constitution of India, there has to be a contra cogent piece of evidence. Only document shown to the Court is the

agreement of the year 2002 and affidavit of neighbour which is in general term. On the basis of these documents alone, assessment of evidence and the prima facie finding of the fact recorded by the learned District Judge cannot be interfered with. Merely because another view is possible on reappreciating the evidence, the use of discretion for grant of injunction which is operating for last six years, cannot be interfered with. Though this Court while issuing notice had observed that the parties to maintain status-quo, grant of injunction was not stayed.

6. In these circumstances, the writ petition cannot be entertained and is accordingly rejected.

N.M. Jamdar, J.