

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

Writ Petition No.1534/2017

(Anirudha Ramkrishna Dhole and another .vs. Abaji Hari Pillar and ors.)

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

Mr. P.A. Gode, Advocate for Petitioners.
 Mr. Y.N. Thengre, Advocate for Respondent No.1.
 Mr. T.S. Kene, Advocate for Respondent No.2.

CORAM : Manish Pitale, J.
DATED : December 18, 2018.

By this writ petition, the petitioners (original plaintiffs) have approached this Court challenging concurrent orders passed by the two Courts below rejecting their application for grant of temporary injunction.

2. The petitioners have filed suit for specific performance against the respondents in respect of agreement dated 04.11.2008. According to the petitioners in terms of the said agreement, the petitioners were put in possession of the suit property and that they have been cultivating the same since then. The agreement in question is not a registered document.

3. The appellate Court, while confirming the order of the trial Court rejecting the application for temporary injunction, has recorded in its judgment and order in paragraph 13 as follows:-

“Perusal of the order passed by Naib Tahsildar shows that on the basis of Mouka panchanama and statements of

respondents no.2 and 3 and neighbouring field owners, the entry of cultivating possession came to be ordered to made in form 7-B for the year 2014-2015. The appellants have thus prima facie shown themselves to be in the cultivating possession."

4. The *Mouka* panchanama referred to in the above quoted paragraph has been placed on record before this Court, which shows that Talathi has found that the petitioners are in cultivating possession of the suit property.

5. This aspect was taken into consideration by this Court while issuing notice and granting interim order in favour of the petitioners herein. The said order dated 28.06.2017 passed by this Court reads as follows:-

"Issue notice to respondents, returnable on 9.8.2017.

In the meantime, Shri Gode, learned counsel for petitioners, seeks ad interim relief in terms of prayer clause (B) of the petition contending that petitioners though are noted by appellate Court to be in possession of suit field and as such, also in the cultivating possession, rejected application for grant of interim injunction observing that there was no prayer in the suit seeking perpetual injunction against respondents. It is submitted that application for effecting necessary amendment in prayer clause was filed on 25.11.2016. While on rejection of prayer for injunction, miscellaneous civil appeal came to be preferred wherein impugned order is passed on 7/10/2016. It is the specific case of petitioners that at the time of disposal of miscellaneous civil appeal, application for amending the prayer

clause was pending, which came to be allowed on 27/1/2017 i.e. after the impugned order passed by appellate Court.

In view of the facts as aforesaid and considering the fact that petitioners are found to be in cultivating possession as mentioned in the impugned order, case is made out for grant of interim relief in terms of prayer clause (B) of the petition, in effect, stay to judgment dated 7/10/2016 passed by learned District Judge, Chandrapur in Misc. Civil Appeal No.15/2016 as well as order dated 15/2/2016 passed by learned Civil Judge, Junior Division, Bramhapuri below Exh.5 in Regular Civil Suit no.4/2015 and respondents not to disturb possession of petitioners until further orders."

6. The learned counsel for the respondents submits that since the agreement in question is not a registered document, claim of possession made by the petitioners on the basis of the said document cannot be looked into and the petitioners do not deserve any order of temporary injunction in their favour, as correctly held by the two Courts below. There is no doubt about the fact that since the agreement in question is not a registered document, a mere statement in such a document about handing over of possession in favour of the petitioners may not be of much assistance. But, in the present case, *Mouka* panchanama dated 16.09.2014 has been placed on record which shows that the petitioners have been in cultivating possession of the suit property. In fact, the appellate Court has taken note of the said document in paragraph 13 of the impugned judgment and order and it has also found that prima

facie the petitioners appeared to be in possession of the suit property.

7. Therefore, it is not just the agreement placed on record which is the basis for the petitioners to claim that they are in cultivating possession, but there is a further document in the form of aforesaid *Mouka panchamama* showing prima facie that the petitioners are in cultivating possession of the suit property. This is vehemently opposed by the learned counsel for the respondents and it is contended that the petitioners are not in possession of the suit property.

8. Considering the documents on record and the finding rendered by the appellate Court in the impugned order on the basis of the aforesaid *Mouka panchanama*, it would be appropriate that the parties maintain *status quo* as on 28.06.2017, when the interim order was passed by this Court in the present writ petition, during the pendency of the suit before the trial Court.

9. In order to ensure that the controversy between the parties is settled at the earliest, the trial Court is directed to decide the suit expeditiously and in any case within a period of six months from today.

10. Writ petition is disposed of.

JUDGE