

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

Writ Petition No.3981 of 2017

(Vijay s/o Wasudeorao Mahurle and another .vs. Ravindra Shamrao Lute)

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

Court's or Judge's orders.

Mr. J.D. Bastian, Advocate for Petitioners.
Mrs. Gauri Venkatraman, Advocate for Respondent.

CORAM : Manish Pitale, J.

DATED : December 04, 2018.

The original defendants are before this Court challenging order passed by the District Court, Chandrapur, dismissing their appeal and confirming the order passed by the Court of Civil Judge, Junior Division, Nagbhid (trial Court), on applications at Exhs. 37 and 55, which were filed by the petitioners (original defendants) and the respondent (original plaintiff) for temporary injunction in a suit for partition and possession filed by the respondent.

2. The respondent had filed an application for grant of temporary injunction to the effect that the petitioners be restrained from creating any third party interest in the suit property, including the field Nos. 460 and 465 and the house property no. 465, during the pendency of the suit to avoid complications.

3. The trial Court took up the applications at Exh.37 and 55 for consideration and by order dated 07.07.2016, disposed of the said applications allowing

them in the following manner:-

"1. Application Exh.37 & 55 are allowed. Plaintiff & defendants to bear their own cost.

2. Defendants or anybody else on their behalf are hereby temporarily restrained from interfering the possession of plaintiff on Bhu.No.460, area 0.98 H.R. situated at Mindala, Tah. Nagbhid, Distt. Chandrapur till the decision of this suit.

So also plaintiff or anybody else on his behalf are hereby temporarily restrained from interfering the possession of defendants on Bhu.No.465, area 2.18 H.R. situated at Mindala, Tah. Nagbhid, Distt. Chandrapur till the decision of this suit.

3. Plaintiff and defendants being co-owners of House No.465 situated at Ward No.3 of Mindala are having same right to use it and they shall not interfere or obstruct each other till the decision of this suit.

4. Plaintiff and defendants are hereby restrained from creating third party interest in suit property by any means till the decision of this suit.

5. Party against whom the final decision of this suit will go shall be liable to compensate the other party for the period of temporary injunction.

6. Parties shall co-operate to dispose off this suit as early as possible."

4. A perusal of the above quoted order would show that the trial Court has directed the petitioners on

one hand not to interfere with the possession of the respondent in field No. 460 and on the other hand, it has directed the respondent not to interfere with the possession of the petitioners in field No. 465, while directing that the parties shall not obstruct each other insofar as the house no.465 is concerned, considering that they are co-owners. Trial Court has also specifically restrained the petitioners as well as the respondent from creating third party interest in the entire suit property during the pendency of the suit. Clause 5 of the aforesaid order directs that the party against whom final decision of the suit will go, shall be liable to compensate the other for the period of temporary injunction. The said order, therefore, seems to take care of the interest of the contesting parties.

5. But, the petitioners challenged the said order by filing an appeal before the District Court. By the impugned order dated 20.12.2016, the District Court dismissed the appeal and confirmed the order of the trial Court. The District Court has found that since the order of the trial Court does not suffer from any perversity and that the findings do not deserve interference, the appeal is liable to be dismissed.

6. It is contended on behalf of the petitioners that since the parties are admittedly co-owners, the order of temporary injunction passed by the trial Court directing the petitioners not to interfere with possession of the respondent, is unsustainable. Reliance is sought to be placed on judgment of this Court in that regard.

7. The learned counsel appearing for the respondent has supported the orders passed by the Courts below.

8. A perusal of the order of the trial Court dated 07.07.2016 shows that the trial Court has considered the entire facts of the matter and it has taken a *prima facie* view that it would be appropriate to direct the parties not to interfere with the possession of properties of each other, during the pendency of the suit. It has been found by the trial Court that if such direction is given, it would be in the interest of justice and to avoid any complications in the matter, the trial Court has specifically restrained the petitioners as well as the respondent from creating third party interest in the suit property. Clause 5 of the order dated 07.07.2016, specifically takes care of compensating the party in whose favour the final decision of the suit is passed. Therefore, it appears that the trial Court has taken into consideration all the facts and on a *prima facie* view of the matter, it has balanced the claim of the rival parties to ensure that the suit property is preserved and that unnecessary complications regarding claims of possession inter se made by the parties do not vitiate the proceedings before the trial Court. The appellate Court is justified in holding that the findings rendered by the trial Court cannot be said to be perverse and that the said order of the trial Court does not deserve interference.

9. In the light of the above, it is found that the petitioners have failed to make out any case against the concurrent orders passed by the Courts below. Accordingly, the writ petition is dismissed.

JUDGE

halwai