

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

WRIT PETITION NO.313 OF 2017

(SUDHAKAR GAJANANRAO BHELONDE & ANR...VS.. VIJAYKUMAR GAJANAN BHELONDE & ANR.)

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

Court's or Judge's orders

Shri Sandeep Tiwari, Advocate for Petitioners.
Shri A.M.Tirukh, Advocate for Respondent Nos. 1 and 2.

CORAM : Z.A.HAQ, J.

DATED : FEBRUARY 27, 2019.

Heard.

The respondents/plaintiffs have filed civil suit praying for decree for permanent and perpetual injunction restraining the defendants from disturbing the possession of the plaintiff over the suit field. In this civil suit, the plaintiffs had filed application praying for temporary injunction. This application was dismissed by the learned trial Judge by order dated 9th August 2016. The plaintiffs had filed appeal before the District Court under Order 43 Rule 1(r) of the Code of Civil Procedure which is allowed by the impugned judgment. The learned District Judge has recorded that the plaintiffs have been able to show that they are in possession of the suit field.

According to the petitioners/defendants they are in cultivating possession of the suit field since 1982. The defendants relied on the affidavit of Shri Sagar Wamanrao Korde, owner of the adjacent field to substantiate their contention that they are in possession of the suit field. The defendants have not produced any documentary evidence to substantiate their claim.

The respondents /plaintiffs have filed their reply on affidavit and along with it, have filed copy of the sale-deed registered on 2nd November 1998 and copies of 7/12 extracts of 1988, 23rd December 2015 and 15th February 2016, and certain receipts to substantiate their contention that they are in cultivating possession of the suit field. The plaintiffs also rely on the affidavit of Shri Madhukar Dasu Awwalwar who claims to be an employee of the plaintiffs, to support their claim that they are in possession of the suit field.

The learned District Judge has considered the relevant aspects and has recorded the findings in paragraph Nos. 20 and 21 of the impugned judgment. I find that the findings recorded by the learned District Judge are *prima-facie* based on material on record and it cannot be said that they are illegal or perverse. I see no reason to interfere with the impugned judgment.

Hence, the writ petition is **dismissed**. In the circumstances, the parties to bear their own costs.

Considering the facts of the case and as the civil suit is of 2016, the learned trial Judge is directed to dispose the civil suit till 30th November 2019.

JUDGE