

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

WRIT PETITION NO.166 OF 2019

(GANESH KANHAIYALAL BHAVRE...VS..DEVIDAS TULSHIRAM KATHAVATE & OTH.)

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

Court's or Judge's orders

Shri V.K.Paliwal, Advocate for Petitioner.

CORAM : Z.A.HAQ, J.

DATED : JANUARY 22, 2019.

Heard.

The respondent No.1 had filed civil suit praying for decree for perpetual injunction against the defendants in that civil suit i.e. against Geetabai (mother of the present petitioner), Arun (brother of the present petitioner) and Anita (sister of the present petitioner). The respondent No.1 (plaintiff) contended that the suit property was initially owned and possessed by Geetabai, Arun and Anita, they sold it to the plaintiff by registered Sale-Deed dated 29th December 1997 and at the time of execution of the sale-deed the plaintiff was put in possession of the suit property. The plaintiff further stated that after purchasing the suit property he constructed a house and as the plaintiff was residing at Bangalore his brother used to look after the property. The plaintiff made a complaint in the civil suit that Geetabai, Arun and Anita were trying to take forcible possession of the suit house and therefore, he had filed civil suit praying for decree for perpetual injunction against them. Subsequently, the plaintiff amended the plaint and prayed for decree for possession as according to him Geetabai, Arun and Anita had

taken forcible possession of the suit property during pendency of the civil suit. Geetabai, Arun and Anita opposed the claim of the plaintiff. After conducting the trial, the learned trial Judge granted decree in favour of the plaintiff by judgment dated 5th April 2008. The trial Court directed the defendants in that civil suit i.e. Geetabai, Arun and Anita to hand over vacant possession of the suit property to the plaintiff. The judgment and decree passed by the trial Court was challenged by Geetabai, Arun and Anita before the District Court in Regular Civil Appeal No. 60 of 2008 which was dismissed on 25th July 2014. The defendants in that civil suit had filed Second Appeal No. 10 of 2016 before this Court, which is also dismissed on 27th June 2017. After dismissal of the second appeal, the executing Court issued warrant of possession and it is obstructed by the present petitioner.

The petitioner has filed objection under Order XXI Rules 97 to 105 read with Section 41 and Section 151 of the Code of Civil Procedure contending that the suit property is ancestral property owned by the joint Hindu family and the petitioner has a share in it by his birth and he is in possession of the suit property. This objection is dismissed by the executing Court by order passed on 18th December 2018. The petitioner has challenged the order passed by the executing Court before the District Court in appeal. In the appeal, the petitioner had filed application (Exh.5) praying that the execution proceedings be stayed. By the impugned order, the learned Principal District Judge directed issuance of notice of the application. As the prayer for *ad-interim* order made by the petitioner is not granted, the petitioner has approached this Court by this petition.

Though various submissions are made by the learned advocate for the petitioner, one of it being that the executing Court is under obligation to decide the objection raised by the petitioner (relying on the judgment given in the case of *N.S.S. Narayana Sarma Vs. M/s. Goldstone Exports (P) Ltd.*, reported in **AIR 2002 SC 251**, specially paragraph 19) I find that the learned Principal District Judge has not committed any illegality or error of jurisdiction. The considerations in paragraph No.3 of the impugned order are based on the material on record. I see no reason to interfere with the impugned order.

The writ petition is **dismissed**. No costs.

JUDGE

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