

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

WRIT PETITION NO.3852 OF 2019

(RAMKRUSHNA LAXMAN LATHAD...VS.. GAJANAN SITARAM THAKARE.)

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

Court's or Judge's orders

Shri D.S.Patil, Advocate for Petitioner.
Shri S.A.Mohta, Advocate for Respondent.

CORAM : Z.A.HAQ, J.

DATED : JUNE 06, 2019.

Heard.

2. The petitioner/ plaintiff has filed civil suit praying for decree for specific performance of contract and permanent injunction restraining the defendant from interfering with his possession over the agricultural land in question. In the civil suit, the plaintiff had filed application under Order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure praying for temporary injunction against the defendants. By order dated 27th June 2018 the learned trial Judge granted temporary injunction in favour of the plaintiff restraining the defendant from disturbing possession of the plaintiff over the suit land. The learned trial Judge relied on the averment in the agreement of sale dated 21st May 2012 that the defendant had given possession of the suit land to the plaintiff.

The order passed by the trial Court was challenged by the defendant before the District Court in appeal which is allowed by the impugned judgment. The learned District Judge has recorded that the agreement of sale dated 21st May 2012 is not registered and therefore, it cannot be considered to adjudicate the claim of the plaintiff.

3. The learned Advocate for the petitioner/plaintiff has submitted that the unregistered document can be looked into for collateral purposes to examine the dispute about possession. To support the submission, reliance is placed on the judgment given in the case of *Sanjay Vs. Vishnupant*, reported in **2007(6) Mh.L.J. 550**.

4. The learned Advocate for the respondent/defendant, relying on the judgment given in the case of *Ameer Minhaj Vs. Dierdre Elizabeth (Wright) Issar*, reported in **2018(5) ALL MR 449(S.C.)** submitted that unregistered agreement of sale cannot be admitted as evidence for the purposes of protection of possession under Section 53A of the Transfer of Property Act as is being sought to be done by the plaintiff in the present case.

The proposition laid down in the judgment given in the case of *Amer Minhaj* (supra) does not assist the respondent/defendant at this stage.

5. Be that as it may, even if the averment in the agreement of sale dated 21st May 2012 is taken into consideration, it has to be seen whether the plaintiff was actually put in possession and he continued to be in possession of the suit land till filing of the suit in 2017. Except for the agreement of sale, the plaintiff has not produced any evidence to substantiate his claim that he was put in possession of the suit field pursuant to the agreement and continued to be in possession of the suit land till filing of the civil suit. On the contrary, the defendants produced documentary evidence i.e. 7/12 extracts to substantiate his claim that the agreement of sale was not acted upon and

possession of the suit land was not given to the plaintiff, as alleged. The plaintiff has not been able to counter the submission made on behalf of the defendant relying on 7/12 extracts. The plaintiff has to discharge the burden of establishing that he was in possession of the suit property at the time of filing of the civil suit.

6. In the present case, the plaintiff has failed to discharge this burden at this stage and hence, the prayer for grant of temporary injunction cannot be allowed. Though the reasons recorded by the learned District Judge for allowing the appeal are not sustainable, I am not inclined to interfere with the impugned judgment as the petitioner/plaintiff has not been able to show that he continued to be in possession of the suit land till filing of the civil suit.

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

JUDGE