

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

WRIT PETITION NO.4325 OF 2017

(SMT. NANEBAI GAHUDAS SONTAKKE...VS.. DADA VISHWANATH LENGURE & OTH.)

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

Court's or Judge's orders

Shri Rohit Joshi, Advocate for Petitioner.
Shri Dhiraj Bhoyar, Advocate for Respondent Nos.1 & 2.

CORAM : Z.A.HAQ, J.

DATED : MARCH 04, 2019.

Heard.

The petitioner has filed civil suit against the respondents/defendants praying for decree for specific performance of agreement dated 16th April 2008 in respect of the suit field. In the civil suit, the plaintiff had filed an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure praying for temporary injunction restraining the defendants from interfering with the plaintiff's possession over the suit land. The learned trial Judge had dismissed this application by order dated 2nd July 2012. The plaintiff had filed an appeal before the District Court under Order 43 Rule 1(r) of the Code of Civil Procedure, which is dismissed by the impugned judgment.

According to the plaintiff, the agreement dated 16th April 2008 executed by the defendant No.1 in favour of the plaintiff states that the possession of the concerned field was handed over to the plaintiff at the time of agreement, but the agreement is not given due weightage by the

subordinate Courts because it is not a registered document. In my view, the subordinate Courts have committed an error by refusing to look into the agreement, as unregistered document can be looked into for co-lateral purposes.

Even if the agreement dated 16th April 2008 is looked into, in my view, the claim of the plaintiff for temporary injunction cannot be granted as the plaintiff has not been able to show beyond doubt that he had been in established possession of the suit field since the date of agreement. The plaintiff relies on the report of Talathi and the order of Tahsildar to substantiate his claim that he is in possession. The Tahsildar has passed order in proceedings initiated by the plaintiff for recording his name in 7/12 extract. The proceedings were initiated sometime in August 2011. There is nothing on record to show that the plaintiff was in possession of the suit field in 2008-2009, 2009-2010 and 2010-2011. According to the plaintiff, Punjabrao Chimurwar was cultivating the suit field since the date of the agreement and had been paying Rs.4,000/- per annum to the plaintiff. But the revenue records do not show name of Punjabrao Chimurwar as in cultivating possession of the suit field. It is argued that the defendant No.1 has also not produced any documentary evidence to show that he had been in possession of the suit field. At this stage, the Court is not required to examine the case of the defendants, as the plaintiff has not been able to show that he had been in established possession of the suit field. The plaintiff is seeking temporary injunction, which if granted, the defendant can be ousted from possession on the strength of that order. An order of temporary injunction restraining the other party from interfering with the possession of the party which seeks

temporary injunction is required to be passed to protect possession of the party in possession and for that the party has to show that it had been in established possession of the suit property.

In the present case, I find that the petitioner/plaintiff has not been able to show that he had been in established possession of the suit property since the date of suit i.e. 2012, hence, I am not inclined to interfere with the impugned orders.

The writ petition is **dismissed**. In the facts and circumstances of the case, the parties to bear their own costs.

As the civil suit is of 2012, the trial Court is directed to expedite the trial and dispose the civil suit till 30th November 2019.

JUDGE