

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

WRIT PETITION NO.6013/2016

Shri Shamrao s/o Atmaram Ambade
Vs.

Shri Baburao s/o Atmaram Gawal and others.

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

Court's or Judge's Orders.

Shri B.M.Kharkate, Advocate for petitioner.
Shri I.N.Choudhari, Advocate for respondents.

CORAM : A.S.CHANDURKAR, J.
DATED : July 10, 2019

The petitioner is the original plaintiff who is aggrieved by the order passed by the appellate Court allowing the miscellaneous appeal filed by the defendants and setting aside the order of temporary injunction as passed by the trial Court.

It is the case of the plaintiff that Gat No.36 admeasuring 0.86 R is government property and that as the plaintiff was a landless person, he had encroached upon the said land in the year 1987-88. It is his case that he was in cultivating possession and the defendant no.1 who was a government servant was trying to disturb his possession. He therefore filed a suit for perpetual injunction on 08.11.2014. Along with the suit he filed an application for temporary injunction. The trial Court recorded a finding that as the government was the owner of the said land and the plaintiff was an encroacher, the defendants had no authority to disturb the possession of the plaintiff. On that count the trial Court allowed the application for temporary injunction. In the appeal filed by the defendants a reference was made to document dated 19.12.2009 on the basis of which the land was allotted to the defendants.

It was held that in absence of any document in favour of the plaintiff indicating his possession, it could not be said that on the date when the suit was filed the plaintiff was in possession. Hence, the miscellaneous appeal came to be allowed.

Shri B.M.Kharkate, learned counsel for the petitioner submitted that the appellate Court was not justified in setting aside the order of temporary injunction. He referred to various documents on record to indicate that the observations of the trial Court that the plaintiff was in possession were correct. The document dated 19.12.2009 had been obtained by the defendant no.1 by practicing fraud and therefore it was not permissible to rely upon the said document. It was thus submitted that the order passed by the trial Court deserves to be restored.

Shri I.N.Choudhari, learned counsel for the respondents supported the impugned order. According to him, the land in question was allotted to the defendant nos. 1 and 2 on 19.12.2009. Since it was the plaintiff who had approached the Court seeking relief, the burden to prove his possession was on the plaintiff. According to him, the appellate Court had observed that there was no document indicating plaintiff's possession. He referred to the 7/12 extract placed on record to indicate the possession of the defendants.

Heard learned counsel for the parties and perused the material on record. According to the plaintiff, he is in possession of the suit property which is government property since 1986-87 as he was a landless person. On the other hand, the defendants claim allotment by virtue of the document dated 19.12.2009. According to the plaintiff, this document is obtained by fraud and therefore it cannot be relied upon. It is to be noted that the question whether the document dated 19.12.2009 is obtained by fraud or is an illegal document would have to be decided

at the trial of the suit. When a *prima-facie* view is required to be taken, the observations of the appellate Court in para 11 indicate that the plaintiff was not able to place any document on record indicating his possession when the suit was filed. In my view, these observations were sufficient for refusing to grant injunction to the plaintiff.

I therefore find that the appellate Court on the basis of the material before it has taken a possible view of the matter and the same does not call for any interference. By clarifying that the trial Court shall not be influenced by any observations made in the orders passed in M.C.A. No.19/2015 or by this Court and by expediting the proceedings in R.C.S. No.21/2014, the writ petition stands dismissed. No costs.

JUDGE

Andurkar.