

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

WRIT PETITION NO.5710 OF 2019

Amit s/o Raju Nandekar, Itwari Telipura, Pewtha, Nagpur

-vs-

Kartarsingh s/o Narayanrao Jadhav, Itwari Mirchi Bazar and ors.

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

Court's or Judge's Orders.

Shri S. D. Ingole, Advocate for petitioner.

Shri M. M. Pimpalgaonkar, Advocate for respondent
No.1.

Shri N. S. Deshpande, Advocate for respondent No.2.

CORAM : A. S. CHANDURKAR, J.

DATE : October 15, 2019

The original plaintiff is aggrieved by the order passed by the trial Court as confirmed by the appellate Court refusing to restrain the defendant No.3 from dispossessing the plaintiff from the suit property.

According to the plaintiff he has filed a suit for specific performance of agreement that was entered into with the defendant No.1 for purchasing the suit property. Part consideration has been duly paid to the defendant No.1. It is his case that he is the tenant of the said property since the year 1972. Since he apprehended his dispossession at the hands of the defendants he sought the relief of temporary injunction during pendency of the suit. The trial Court as well as the appellate Court have restrained the defendant Nos.1 and

2 from dispossessing the plaintiff. However as the plaintiff has no title to the suit property and as the Bank-defendant No.3 intended to recover its dues from the defendant Nos.1 and 2, no injunction was granted against it.

2. Shri S. D. Ingole, learned counsel for the petitioner submits that since the petitioner is in possession as a tenant since 1972 his possession ought to have been protected by granting injunction against all the defendants. According to him substantial payment has been made to the defendant No.1 pursuant to the agreement in question. Hence the defendant No.3 was also required to be restrained from dispossessing the plaintiff. Though the defendant No.3 had sought to rely upon the recovery certificate as issued, it did not implead the petitioner as a party in recovery proceedings. Hence the order passed by the appellate Court was liable to be modified in favour of the plaintiff.

3. Shri N. G. Jetha, learned counsel for the respondent No.3 submitted that recovery certificate has been issued as the defendant Nos.1 and 2 had failed to repay the amount borrowed by them. The suit property had been mortgaged with the Bank and it was not concerned with the agreement between the plaintiff and the

defendant Nos.1 and 2. He submits that by following the due process of law the defendant No.3 would execute the order passed under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (for short, the said Act).

4. On perusing the pleadings of the parties and the impugned order it is seen that there is no privity of contract between the plaintiff and the defendant No.3. The defendant No.3 as creditor of defendant Nos.1 and 2 is seeking to recover its dues. It has been granted a Recovery Certificate under Section 101 of the said Act. The Courts have rightly found that the plaintiff had no title to the suit property so as to restrain the defendant No.3 from proceeding for recovery of its dues. The remedy of the plaintiff lies against the defendant Nos.1 and 2. Hence I do not find any reason to interfere with the impugned order. It is always open for the defendant No.3 to take such steps as are permissible in law to safeguard its interests as regards the mortgaged property.

The Writ Petition is therefore dismissed. No costs.

JUDGE