

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

WRIT PETITION NO.5850 OF 2019

(LIMBAJI TUKARAM THOMBARE & OTH...VS.. STATE OF MAHARASHTRA & OTH.)

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

Court's or Judge's orders

Dr. Mohan S. Gawai, Advocate for Petitioners.
Shri N.R.Patil, A.G.P. for Respondent Nos. 1 and 2.

CORAM : Z.A.HAQ, J.

DATED : AUGUST 23, 2019.

Heard.

The petitioners have filed civil suit against the State of Maharashtra and Range Forest Officer seeking decree for permanent injunction restraining the defendants from interfering with possession of the plaintiffs over the suit lands. In this civil suit, the plaintiffs had filed an application praying for temporary injunction restraining the defendants from interfering with possession of the plaintiffs over the suit lands. This application was allowed by the trial Court. The Range Forest Officer and the State of Maharashtra had challenged the order passed by the trial Court by filing appeal under Order 43 Rule 1(r) of the Code of Civil Procedure. By the impugned judgment, the learned District Judge has allowed the appeal and has set aside the order passed by the trial Court. The learned District Judge has recorded that the plaintiffs have failed to establish that they had been in peaceful possession of the suit land as claimed by them. The relevant considerations are recorded in paragraph No.6 of the judgment as follows:

“6. On perusal of the record it appears that though plaintiffs are claiming that they are in possession of the suit land since 1973, however, no any cogent and reliable documents produced on record to show that they are legally in possession of the suit lands. Plaintiffs in support of their case have produced some receipts and copy of extract of encroachment register for the year 1983-84. However, they have not produced any documents to show that at the time of filing of the suit they are in possession of the suit land. Moreover they have not filed any affidavit of adjacent land holders to prima facie show that they are in possession of the suit lands. Even the documents filed by the plaintiffs are considered, then also it only appears that on the basis of copy of extract of encroachment register of the year 1983-84, they are claiming that they are in possession of suit lands. However, they have not produced any documents subsequent to that to show that they are in possession of the suit land. On the contrary, the documents produced by defendants prima facie shows that on 12.7.1985 revenue department handed over possession of the suit land to the defendants and since then their name is recorded in 7/12 extract by the revenue authority as an owner and possessor and therefore I do not find substance in the documents produced by the plaintiffs to show their possession over the suit land. However, Ld. Trial court has not considered the said facts nor prima facie held that plaintiffs are in possession of the suit land, however, granted injunction. The said order appears to be contrary to the documents on record as well as illegal and perverse. On the basis of the said documents, order cannot be sustained. Hence, in my view the impugned order is liable to be set aside in appeal.”

The petitioners have not been able to point out any illegality or perversity in the findings recorded by the learned District Judge. Hence, I see no reason to interfere with the impugned judgment.

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

JUDGE

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