

**FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR**

WRIT PETITION NO. NO. 6584/2019
(RAHUL RAMRAO PADGHAN **VERSUS** AMOL RAMRAO PADGHAN)

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

Court's or Judge's orders

Shri P.B. Patil, counsel for petitioner.
Shri S.H. Hiwale, counsel for respondent.

CORAM : A.S. CHANDURKAR, J.
DATE : DECEMBER 04, 2019.

The challenge raised in the present writ petition is to the order passed by the Appellate Court in the miscellaneous appeal preferred by the respondent herein challenging the order of temporary injunction as passed by the trial Court in the suit filed by the petitioner. By the impugned order, that miscellaneous appeal has been allowed and the order passed below Exhibit 5 has been set aside.

The petitioner is the elder brother of the respondent. Their relations however appear to be strained. It is the case of the petitioner that one Vishnu was their grandfather having two sons Sheshrao and Ramrao. The petitioner and the respondent are the sons of Ramrao who has expired. Vishnu alongwith his two sons had separated and therefore it is the case of the petitioner that after the death of Vishnu, a right was created in the property owned by him. On 05.01.2006, Vishnu executed a Will which was duly registered in favour of the petitioner. Field Gat Nos.2, 1021, 917 and 907 were bequeathed in favour of the petitioner. Vishnu expired on 10.10.2018. According to the petitioner, the respondent sought to interfere with the peaceful possession of the petitioner over the suit properties which led to filing of various police reports.

On the aforesaid cause of action, the petitioner filed a suit on 04.04.2019 seeking permanent injunction so as to restrain the respondent from disturbing his possession over the suit property. In that suit he also filed an application for temporary injunction.

The respondent filed his written statement at Exhibit 25 denying the plea that the suit properties were the self acquired properties of Vishnu. The execution of the Will in favour of the petitioner was also challenged by stating that it was not executed by free will. Various mutation entries in favour of the petitioner were taken without notice to the legal heirs. After the death of Vishnu, his widow Mathurabai acquired title to the suit properties and on her behalf it was the respondent who was in possession. Mathurabai had also filed R.C.S. No.146 of 2018 for challenging the said Will. It was further pleaded that the petitioner had also filed R.C.S. No.2 of 2019 against one Vilas Vinayak Padghan. However that suit was subsequently withdrawn and thereafter the present suit was filed. It was asserted in the reply filed to the application for temporary injunction that it was the defendant who was in possession.

The trial Court after considering the documents placed on record by both the sides held that in view of the registered Will dated 05.01.2006 executed by Vishnu in favour of the petitioner he had *prima-facie* title to the suit properties. After considering the affidavits of adjoining land owners the trial Court on 02.07.2019 allowed the application for temporary injunction. The respondent challenged that order by filing a miscellaneous appeal. The Appellate Court found that the mutation entries relied upon by the petitioner had been taken in a hurried manner without notice to all the legal heirs. In the earlier suit filed by the plaintiff against Vilas the fact that there was some obstruction to the plaintiff's possession had not been pleaded despite the fact that the cause of action for

filing the present suit was in existence at that point of time. After considering various documents including the affidavits of the neighbouring field owners it was found that the possession of the petitioner did not appear to be probable. Hence the order passed by the trial Court below Exhibit 5 was set aside and the application for temporary injunction came to be rejected. Being aggrieved, the petitioner has challenged the aforesaid order.

Shri P.B. Patil, learned counsel for the petitioner submitted that in the light of the fact that on 05.01.2006 Vishnu had executed a Will in favour of the petitioner which was duly registered, the petitioner got title to the suit properties which were bequeathed to him after the death of Vishnu. He referred to various documents on record including police complaints and the order passed by the learned Magistrate directing the crops harvested to be given to the petitioner. He submitted that considering the mutation entries which were taken on the basis of the registered Will, a *prima-facie* case had been made out by the petitioner. Various affidavits filed on behalf of the petitioner before the trial Court were taken into consideration while granting temporary injunction but the Appellate Court failed to go into those affidavits. The filing of Regular Civil Suit No.2 of 2019 and its withdrawal was not relevant for the facts of the present case and the same had no bearing on the prayer for grant of temporary injunction. Moreover, the father-in-law of the respondent was employed as a driver with the learned Judge of the Appellate Court and this fact also weighed with the Court while allowing the miscellaneous appeal. It was thus submitted that the order passed by the trial Court was not liable to be interfered with by the Appellate Court.

Shri S.H. Hiwale, learned counsel for the respondent supported the order passed by the Appellate Court. According to him, after examining all the material on record it was rightly found by the Appellate Court that the defendant was in possession of the suit fields at the instance of the widow of Vishnu. He referred to the pleadings in Regular Civil Suit No.2 of 2019 that was filed by the petitioner and submitted that though the cause of action for the present proceedings was shown to have been existing when that suit was filed there was no mention of any obstruction being caused by the respondent. The present suit was filed on 05.04.2019 with the cause of action having arisen in November and December-2018. According to the learned counsel though Regular Civil Suit No.2 of 2019 was filed thereafter there is no reference of any obstruction by the respondent nor was he joined as a defendant in that suit. The Will in question had been challenged by the widow of Vishnu by filing Regular Civil Suit No.146 of 2018 and therefore it could not be said that the petitioner had a title to the suit property. It was thus submitted that the Appellate Court rightly considered all the documentary material on record and concluded that there was no *prima-facie* case in favour of the petitioner. As the grant of injunction was not found to be justified, the order passed by the Appellate Court was rightly set aside. The same did not warrant any interference.

After hearing the learned counsel for the parties and on *prima-facie* perusing the documentary material placed on record, I am satisfied that the learned Judge of the Appellate Court has by taking a possible view of the matter rightly allowed the miscellaneous appeal and vacated the order of temporary injunction as granted by the trial Court. Besides the reasons as stated in the impugned order, it is to be noted that the petitioner herein had filed Regular Civil Suit No.2 of 2019 against one Vilas Vinayak Padghan which was a

suit for perpetual injunction and the suit properties involved in that suit were the same properties which are the subject matter of the present suit. The respondent herein had moved an application below Exhibit 11 in that suit praying that he be added as a defendant in that suit especially as he had a right in the suit properties. The said application was filed on 18.02.2019. The petitioner opposed that application by giving his say on 13.03.2019. It was stated that the respondent had no connection with the suit properties and only with a view to harass the petitioner the said application had been moved. The trial Court incidentally allowed that application and as stated above that suit was thereafter withdrawn. It is pertinent to note that in the present suit filed by the petitioner against the respondent the cause of action is stated to have arisen on 23.11.2018 and 07.12.2018. On 13.03.2019, when the plaintiff-petitioner opposed the application for addition of the respondent as a party in Regular Civil Suit No.2 of 2019 without making any reference to the obstruction as alleged to have been caused by the respondent on 23.11.2018 and 07.12.2018, the same definitely raises a doubt with regard to the allegations made by the petitioner in the present plaint. *Prima-facie*, if any obstruction was caused by the respondent on 23.11.2018 and 07.12.2018 there was no occasion for the petitioner to state on 13.03.2019 that the respondent had no concern with any of the suit properties.

Another aspect which cannot be ignored is the objection raised by the widow of Vishnu-Mathurabai in the proceedings for releasing the harvested crop on supratnama. She had raised such objection at Exhibit 7 on oath on 12.06.2019 in which it was stated that the Will-deed on the basis of which the petitioner was claiming the rights had been challenged by her by filing Regular civil suit No.146 of 2018 and further that she alone

was entitled to receive those crops on supratnama. Similarly, there is an affidavit of one Kishor Padghan stating therein that he had sown the crops in Gat No.2 which is one of the suit properties at the instance of the respondent and that the petitioner had no concern with the same. Moreover, as per the statement recorded by the Police Authorities of one Bhagwan Padghan on 24.04.2019, the crops were harvested on the instructions of the respondent after which the same were kept in the godown. This material *prima-facie* indicates that the crops were sown by the respondent on the instructions of Mathurabai and it does not indicate any involvement of the petitioner in those activities. There is also material on record in the form of reports given by the petitioner himself that the respondent had put a lock on the godown. These reports are dated 26.12.2018 and 03.04.2019.

It is thus found that by considering all this material as well as the manner in which the mutation entries were hastily taken without due notice to all the legal heirs of Vishnu, the Appellate Court as a Court of appeal found it fit to interfere with the order passed by the trial Court. I find that the Appellate Court in the light of the material on record has taken a possible view of the matter and the said order does not call for any interference in writ jurisdiction.

By clarifying that the trial Court shall not be influenced by the observations made by the Courts while deciding the application for temporary injunction as well as the observations made in this order, the Writ Petition stands dismissed with no order as to costs. The suit shall be decided on its own merits.

JUDGE