

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

WRIT PETITION NO. 796/2019

Balchandra Shreeram Dubevar
..VS..
Purshottam Shreeram Dubevar & anr.

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

Court's or Judge's orders

Shri A.H. Daga, Advocate for the petitioner

CORAM : Z.A.HAQ, J.
DATED : 05/02/2019

Heard.

The petitioner has filed the civil suit against his real brothers seeking decree for permanent injunction restraining them from obstructing possession of the plaintiff over the suit field. The plaintiff claims that he became absolute owner of the suit field on the basis of Will executed by his father on 11/11/2017. The father of the plaintiff died on 14/11/2017 i.e. 3 days after execution of the alleged Will. In the civil suit, the plaintiff had filed an application praying for temporary injunction. The learned trial Judge allowed the application filed by the plaintiff by the order dated 12/06/2018. This order was challenged by the respondent no. 1 before the District Court in appeal which is allowed by the impugned judgment. The learned District Judge has set aside the order passed by the trial Court and has dismissed the application (Exh. 5) filed by the plaintiff.

With the assistance of the learned advocate for the petitioner – plaintiff, I have examined the material placed on record of the petition. The petitioner is seeking prohibitory orders against his real brothers who are claiming to be the co-owners of the suit field. Considering this fact, the plaintiff should have brought on record proper material to show that from November 2017, he had been in exclusive possession of the suit field. The plaintiff has not been able to substantiate his claim. I find that the learned District Judge has rightly allowed the appeal filed by the respondent no. 1 and has rightly set aside the order passed by the trial Court. It cannot be said that the learned District Judge has committed any patent illegality or error of jurisdiction which necessitates interference by this Court in the extra-ordinary jurisdiction.

The writ petition is **dismissed**. No costs.

JUDGE

Ansari