

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

WRIT PETITION NO. 25/2019

(ANNAPURNA @ PUSHPA BABUSINGH RATHOD & ANOTHER VERSUS ARUN DHUMAJI RATHOD)

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

Court's or Judge's orders

 Shri N.S. Deshpande, counsel for petitioners.
 Shri R.J. Shinde, counsel for respondent.

CORAM : A.S. CHANDURKAR, J.

DATE : APRIL 01, 2019.

An order passed by the trial Court below Exhibit 5 restraining the petitioners-defendant nos.1 and 2 from obstructing the possession of the plaintiff during pendency of the suit which order has been confirmed by the Appellate Court is under challenge in the present writ petition.

Shri N.S. Deshpande, learned counsel for the petitioners submitted that the title of the suit property vests with the defendant no.1 as the sale-deed of the said property dated 09.01.2002 stands in the name of defendant no.1. It is claimed that the plaintiff forcibly occupied the suit block and on that basis a suit simplicitor for perpetual injunction came to be filed. The Courts without considering the aspect of title of the defendant no.1 have proceeded to grant the injunction.

On the other hand, Shri R.J. Shinde, learned counsel for the respondent submits that both the Courts have recorded a *prima-facie* finding that the plaintiff was in possession. As such finding has been recorded, there is no reason to interfere in writ jurisdiction.

After hearing learned counsel for the parties and after perusing documents on record, it is seen that both the Courts have by taking a *prima-facie* view of the matter observed that the plaintiff was found to be in possession. Reference has been made to a First Information Report lodged by the defendants in which it was stated that since 2002 possession was handed over to the plaintiff. The question as to the effect of title vesting with the defendant no.1 and the allegation that the documents in possession of the plaintiff are said to be fabricated are matters to be considered at the trial of the suit. It is found that a possible view of the matter has been taken by the Courts while granting temporary injunction.

By observing that the trial Court shall decide the suit without being influenced by any observations made either by the trial Court or by the Appellate Court in the Miscellaneous Appeal, the Writ Petition stands dismissed with no order as to costs.

JUDGE

APTE