

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

**CONTEMPT PETITION NO. 150 OF 2019**

(Sanjay S/o Devidas Khobragade Vrs. Sumanbai W/o Keshaorao Thapale and others)

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

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Court's or Judge's orders.

Shri S.D.Malke, counsel for the petitioner.  
Shri D.S.Agnithori, counsel for the respondent no.1  
Shri Abhijeet Khare, counsel for the respondent no.3.

**CORAM : ANIL S KILOR, J.**  
**DATE : 04<sup>th</sup> MARCH, 2020.**

Heard Shri Malke, learned counsel for the  
petitioner, Shri Agnihotri, learned counsel for the  
respondent no.1 and Shri Khare, learned counsel for  
the respondent no.3.

2. Shri Malke, learned counsel for the  
petitioner submits that petitioner was the original  
defendant no.3 in Regular Civil Suit No. 21 of 2004  
filed by the respondents for declaration to the effect  
that plaintiff no.1 is the owner of the property.

3. He points out that in the said suit the defendant nos. 2 to 6 filed the counter claim seeking permanent injunction restraining the plaintiffs from causing any sort of obstruction to the peaceful possession of defendants, except due procedure of law.

4. Learned counsel for the petitioner further argues that the respondents are not allowing the petitioner to cultivate the land and even they are not allowing the petitioner to enter into the land in dispute, therefore, the respondents have committed contempt of Court. In the said backdrop, he prays for order of this Court to punish the respondents under the provisions of Contempt of Court.

5. Per contra, Shri Khare, learned counsel for the respondent no.3 points out that from the finding recorded by the trial Court in the said judgment and decree dated 13<sup>th</sup> July, 2016 it is clear that the Court has observed on the basis of revenue record that

plaintiff no.1 Sumanbai W/o Kasharao Thapale is in possession of the suit property, but she is not lawfully entitled to the possession and her possession is only permissive possession.

6. Shri Khare, learned counsel for the respondent no.3 further points out that application at page no.40 of the paper book, made by the petitioner to the Police Station Officer, Andhadgaon Police Station, Teh. Mohadi, Dist. Bhandara for providing police aid to take possession of land in dispute and submits that from the findings recorded by the trial Court as well as the application made by the petitioner himself to the police department seeking police aid, is sufficient to show that the petitioner was never in possession and therefore in absence of any order or direction by the trial Court to hand over the possession to the petitioner, not allowing the petitioner to take possession of the land in dispute does not amount to Contempt of Court.

7. Shri Agnihotri, learned counsel for the respondent no.1 points out that it is not the case of the petitioner that respondents are disturbing the possession of the petitioner, but there is a specific case of the petitioner that respondents are not handing over the possession of the land in dispute.

8. He points out that appeal has already been preferred against the said judgment and decree and the same is pending.

9. To consider the rival contentions of parties, I have gone through the record.

10. There is no dispute that the learned Trial Court has categorically observed that plaintiff no.1 Sumanbai is in possession of the suit property and further trial Court has observed that she is permissive possession of the property in dispute.

11. The letter (Annexure no.5) at page no.40

of the paper book submitted by the petitioner himself to the Police Station Officer, Andhadgaon Police Station, Teh. Mohadi, Dist. Bhandara, is sufficient to show that the said application made by the petitioner was to seek police aid and to take possession of the land in dispute.

12. Further, the petitioner is also not disputing that he is not in possession of the land in dispute.

13. In the said backdrop of the admitted facts, if the order of the learned Trial Court is seen, it is clear from the clause no.4 of the order that the learned trial Court has restrained the plaintiffs from causing any sort of obstruction to the peaceful possession of defendants, except by following due procedure of law.

14. There is no specific direction or order of the trial Court to the respondent to handover the

possession of the land in dispute. Thus, in absence of any such direction or order of the trial Court it cannot be said that the respondents have committed any contempt by not allowing the petitioner to enter into the suit field which is in possession of Sumanbai i.e respondent no.1.

15. In view of that matter, I have no hesitation to hold that the respondents have not committed any contempt in the present matter.

16. Accordingly, I discharged the respondents and dismissed the present contempt petition.

17. No order as to costs.

**JUDGE**