

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**WRIT PETITION NO. 684 OF 2020**

1. Atul Arjun Gophane  
Age: 40 years, Occu.: Agri.,  
R/o Bhothra, Tq. Paranda,  
Dist. Osmanabad
2. Supriya Pramod Kadam  
Age: 38 years, Occu.: Household,  
R/o As above

..PETITIONERS

VERSUS

1. Naushad Basha Basale  
Age: 48 years, Occu.: Agri.,  
R/o Agarkar Galli, Paranda,  
Tq. Paranda, Dist. Osmanabad
2. Farjana Naushad Basale  
Age: 45 years, Occu.: Household,  
R/o As above

..RESPONDENTS

....

Mr. Abhijit S. More, Advocate for petitioners  
Mr. Anant R. Devkate, Advocate for respondents

....

**CORAM : R.G. AVACHAT, J.**  
**RESERVED ON : 11<sup>th</sup> JANUARY, 2021**  
**PRONOUNCED ON : 19<sup>th</sup> JANUARY, 2021**

**JUDGMENT :**

Rule. Rule made returnable forthwith. Heard learned counsel for  
the parties finally, by consent.

2. The challenge in this writ petition is to order dated 13<sup>th</sup> November, 2019 passed by District Judge-1, Bhoom in Miscellaneous Civil Appeal No. 9 of 2018. By the impugned order, the petitioners (original defendants) have temporarily been restrained from obstructing the respondents' (original plaintiffs) possession over the suit properties.

3. The respondents' claim to have been in possession of the suit properties, particularly described in paragraph no.1 of the plaint (Regular Civil Suit No. 1118 of 2017) by virtue of lease deed executed in their favour by father of the petitioners.

4. Mr. Abhijit More, learned counsel for the petitioners would submit that trial court had rightly rejected temporary injunction application moved by the respondents. The appellate court ought not to have interfered with the order refusing to grant temporary injunction. Learned counsel would submit that the revenue record of the suit properties stands in the name of the petitioners. The appellate court, ought not to have interfered with the trial court's order when the trial court had exercised its discretion. There was no material to upset the order passed by the trial court. In respect of his contentions, learned counsel has relied on the following authorities :-

*Seema Arshad Zaheer and Others Vs. Municipal Corpn. Of Greater Mumbai and Others (2006) 5 SCC 282*

*Mohd. Mehtab Khan and Others Vs. Khushnuma Ibrahim and Others (2013)*  
9 SCC 221

5. Mr. Anant Devkate, learned counsel for the respondents would, on the other hand, submit that father of the petitioners executed a lease deed before the notary. He had received a valuable consideration for handing over possession of the suit properties in favour of the respondents. Petitioner's father, during his life time, did not obstruct respondents' possession over the suit properties. It is only on his demise the petitioners got their names recorded in the revenue record of the suit properties by virtue of succession and started obstructing respondents' possession. The suit, therefore, came to be filed. According to learned counsel, the appellate court has rightly exercised the discretion in favour of the respondents. No interference is, therefore, called for.

6. Admittedly, the suit properties belonged to father of the petitioners. He appears to have executed a lease deed in favour of the respondents for a period of ninety nine years. A copy thereof is on record. The petitioners admit their father's signature on the lease deed. According to them, their father's signature was obtained on a blank stamp paper. Such defense imposes burden of proof on the petitioners. Admittedly, two other properties belonging to father of the petitioners have been sold by him to the respondents for a valuable consideration. Before the trial court, the attesting

witnesses to the lease deed have filed their affidavit reiterating the averments in the lease deed. True, the lease deed is an unregistered document. The same, however, could be looked into for collateral purpose so as to ascertain factum of possession. The recitals of the lease deed indicate the father of the petitioners to have parted with possession of the suit properties in favour of the respondents. True, the revenue record stands in the name of the respondents. The trial court refuses to rely on the lease deed on the ground of having been unregistered document. It relied on the revenue record indicating the respondents to be in possession of the suit properties.

7. Since the petitioners admit their father's signature on the lease deed, whereunder he parted with possession of the suit properties in favour of the respondents, the appellate court has rightly observed the petitioners to have not been in possession of the suit properties. True, the appellate court normally should not interfere with the exercise of discretion by the trial court (*Mohd. Mehtab Khan and Others* (supra)).

8. In my view, since the recital of the lease deed run counter to the claim of the petitioners, the appellate court was justified in interfering with the order passed by the trial court refusing to grant ad-interim injunction. No interference with the impugned order is, therefore, called for.

9. In the result, writ petition fails. Same is dismissed. Trial court is directed to expedite hearing of the suit on and decide the same, preferably within a period of twelve months. Needless to mention, the trial court shall not be influenced by the observations made hereinabove. Rule is discharged.

( R.G. AVACHAT, J. )

SSD