

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

APPEAL AGAINST ORDER NO. 10 OF 2020

APPELLANT:
(On R.A.)

Vimal w/o Dashrath Jakkulwar,
Aged about 56 years, Occupation:
Cultivation, R/o Tekadi Tah – Mul,
District – Chandrapur (MS), Through
her Power of Attorney Dashrath s/o
Ushannaji Jakkulwar, Aged about
78 years, Occupation: Cultivation
R/o Tekadi, Tahsil: Mul,
District Chandrapur (MS).
(ORIGINAL PLAINTIFF)

...V E R S U S...

RESPONDENTS
(On R.A.)

- :1] Shri Kisan @ Krishna s/o Budha Jarate
Aged about 76 years, Occu-Cultivation.
- 2] ~~Shri Bhagwan s/o Dewaji Bhoyar,~~
~~Aged about 66 years, Occupation-~~
~~Cultivation.~~
[Deleted as per order dt. 11/03/2021]
- 3] Shri Shankar s/o Dewaji Bhoyar,
Aged about 56 years, Occupation: Nil.
- 4] Shri Vasant s/o Dewaji Bhoyar,
Aged about 59 years, Occupation:
Cultivation.
- 5] Shri Sadu S/o Dewaji Bhoyar,
Aged about 61 years, Occupation-
Cultivation.

- 6] Shri Sudhakar s/o Dewaji Bhoyar,
Aged about 46 years, Occupation-
Cultivation.
- 7] Shri Maroti s/o Nago Kolhe,
Aged about 41 years, Occupation-
Cultivation.
- 8] Shri Tadkya s/o Lahanu Bhoyar,
Aged about 43 years, Occupation-
Cultivation.
- 9] Shri Balaji s/o Mahagu Gohane,
Aged about 36 years,
Occupation- Cultivation.
All residents of Tekadi, Tah. Mul,
District–Chandrapur.
(ORIGINAL DEFENDANTS)

Shri M.P. Khajanchi, counsel for the Appellant.
Shri P.R. Dawda, counsel for the Respondent Nos.3 and 8.

CORAM : ANIL S. KILOR, J.
DATE : 08th DECEMBER, 2021

ORAL JUDGMENT :

1. This appeal is directed against the order arising out of the order below Exhibit 5 dated 13/11/2019, in Regular Civil Appeal No. 89/2018, passed by the District Judge-1, Chandrapur, rejecting the application moved by the appellant/plaintiff under Order XXXIX Rules 1 and 2 of the CPC, for grant of temporary injunction restraining the

defendant from interfering her possession.

2. The brief facts of the present case are as follows: (the parties are referred to as per their status before the trial Court)

The appellant/plaintiff filed a suit for permanent injunction, claiming that the suit property is a Government Land and that since last 60 years, the ancestors of the plaintiff possessed and cultivated the suit property. It is the case of the plaintiff that the Revenue Record supports her case, as regards her possession. She further alleged that the defendant Nos. 1 to 9 are trying to take the possession of the suit property and hence the suit was filed along with an application–Exhibit 5 under Order XXXIX Rules 1 and 2 the CPC, for grant of temporary injunction restraining the defendant from interfering with the possession of the plaintiff over the suit property. The said application came to be allowed on 11/02/2014, vide order below Exhibit 5 passed by the Civil Judge, Junior Division, Mul.

3. The said order below Exhibit 5 was continued till the dismissal of the suit vide judgment and decree dated 04/08/2018. The plaintiff, feeling aggrieved by the same, preferred an appeal along with an application-Exhibit 5 under Order XXXIX Rules 1 and 2 of the CPC. The learned Appellate Court on 01/09/2018, granted status-quo.

However, thereafter while deciding application–Exhibit 5, the injunction was refused and application-Exhibit No.5 was rejected vide order dated 13/11/2019. The same is under challenge in this appeal.

4. I have heard the learned counsel for the respective parties.

5. Shri M.P. Khajanchi, learned counsel for the appellant submits that in the suit, the application-Exhibit No.5 was allowed in favour of the plaintiff vide order dated 11/02/2014. The same was continued till the dismissal of the suit on 04/08/2018 and in the appeal status-quo was granted on 01/09/2018, and the same continued till 13/11/2019 i.e., the date on which the application-Exhibit No.5 was rejected by the learned Lower Appellate Court.

6. It is submitted that, in view of the aforesaid orders protecting the possession, the plaintiff is in continuous possession of the suit property. It is thus, argued that rejection of application-Exhibit 5 by the learned Lower Appellate Court is erroneous.

7. He has drawn attention of this Court to the findings recorded by the learned Lower Appellate Court while rejecting the application-Exhibit No.5. It is submitted that the

learned Lower Appellate Court has held that in the 7/12 Extract of the year 2013-14, the possession of the plaintiff was shown and subsequent revenue record has not been brought on record. The learned Lower Appellate Court has held that after 2014, the plaintiff has not proved that he is in possession of the suit land. It is submitted that once the learned Lower Appellate Court has admitted the fact of possession of the plaintiff over the suit property in the year 2014, thereafter there were orders of the trial Court and Lower Appellate Court in favour of the plaintiff protecting her possession. Therefore, according to him, the said finding is erroneous and contrary to the record.

8. *Per contra*, the learned counsel for the respondents supports the impugned order below Exhibit 5 and submits that after considering the findings recorded by the learned trial Court, as regards the possession, the application-Exhibit No.5 was rightly rejected by the learned Lower Appellate Court.

9. The learned counsel for the respondents has drawn attention of this Court to the findings recorded in para-17 of the judgment of the trial Court and states that the learned Trial Court has recorded the admission of the plaintiff that the defendants are in possession of the suit property. He, therefore, submits that there is no error committed by the

learned Lower Appellate Court in rejecting the application-Exhibit 5 filed by the plaintiff in Regular Civil Appeal No. 89/2018.

10. To consider the rival contentions of the plaintiff, I have gone through the record, impugned order and also perused the judgment and decree passed by the learned trial Court.

11. The learned Lower Appellate Court has observed that the 7/12 Extract of the year 2013-14, shows the possession of the plaintiff over the suit land.

12. Furthermore, the suit was filed in the year 2014 and on 11/02/2014, the learned trial Court protected the possession of the plaintiff by allowing the application-Exhibit 5 filed by the plaintiff under Order XXXIX Rules 1 and 2 of the CPC. The aforesaid order below Exhibit-5 dated 11/02/2014, was continued till decision of the suit i.e., till 04/08/2018.

13. There is no dispute that immediately thereafter, the appeal was filed on 01/09/2018, wherein status-quo was granted, which continued till the decision of the application – Exhibit-5 on 13/11/2019.

14. In the above referred admitted facts, when a query was put to learned counsel for the respondent that whether the defendants have raised any challenge to the order below Exhibit-5 dated 11/02/2014, passed by the learned Trial Court as the ground that the findings recorded by the Court in respect of possession of the plaintiff, is erroneous, he fairly states that no such challenge was raised at any time.

15. A prudent man who is in the possession of the suit property, in normal circumstances, will not remain silent on passing of any adverse order against such person restraining him from disturbing the possession of a person who according to him is not in possession.

16. If the defendants are in possession of the suit property, surprisingly no appeal was filed challenging the order below Exhibit-5 passed by the trial Court for such a long period from 2014 to 2018. Even no explanation has been offered for not challenging the said order.

17. In view of the above referred admitted facts, I am of the considered view that the order below Exhibit-5 passed by the District Judge-1, Chandrapur in Regular Civil Appeal No. 89/2018 needs to be quashed and set aside. Accordingly, I pass the following order:-

ORDER

- a] The appeal is allowed.
- b] The order below Exhibit 5 dated 13/11/2019 is hereby quashed and set aside. The application Exhibit No.5 in Regular Civil Appeal No. 89/2018 is allowed and thereby the defendant/respondent Nos. 1 to 9 are restrained from disturbing the possession of the plaintiff till decision of the appeal.
- c] At the stage, learned counsel for the respondent Nos. 3 and 8 made a request to expedite the appeal.
- The appeal is pending since 2019, however, the period during pandemic cannot be considered. Accordingly, considering the request made by the respondent Nos. 3 and 8, the learned Appellate Court is requested to dispose of the appeal by the end of September-2022.
- d] No order as to costs.

[ANIL S. KILOR, J.]