

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

WRIT PETITION NO. 1567 OF 2020

Istari s/o Gondba Shindhmeshram

vs.

Kacharu s/o Sakharam Kamble

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

Court's or Judge's orders

Mr. D. V. Mahajan, Advocate for petitioner.

CORAM : MANISH PITALE J.

DATED : 23/06/2021

Hearing was conducted through Video Conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. Heard learned counsel for the petitioner.

3. By this writ petition, the petitioner (original defendant) has challenged order passed by the Court of District Judge – 6, Nagpur (appellate Court) dated 04/02/2020, whereby appeal filed by the respondent (original plaintiff) has been allowed and temporary injunction as prayed under application at Exh.5 has been granted in favour of the respondent.

4. In the present case, the respondent has filed a suit for declaration and permanent injunction against the petitioner on the basis of a registered Sale Deed. The

respondent claims that he is in possession of the suit property.

5. The contention of the petitioner is that the said transaction on the basis of a registered power of attorney and registered Sale Deed claimed by the respondent was actually a money lending transaction and that the petitioner has continued in possession of the suit property. On this basis, the petitioner resisted the application for grant of temporary injunction.

6. The parties filed affidavits in support of their respective claims of being in possession of the suit property. The application for temporary injunction in the first instance was rejected by the Court of Civil Judge Junior Division, Kuhl (trial Court). Aggrieved by the same, the respondent filed an appeal before the appellate Court, which has been allowed by the impugned order.

7. Since the rival parties have filed affidavit in respect of their claims of being in possession of the suit property, at the stage of considering the prayer for temporary injunction to protect possession claimed by the respondent, the Courts below were expected to adopt a reasonable approach.

8. While setting aside the order of the trial Court, the appellate Court in paragraph 10 and 11 has held as follows :-

“10] Admittedly, both parties have filed on record affidavit of witnesses to show their possession over suit property. However, it is settled principle of law that the documentary evidence shall prevail over oral evidence. Upon perusal of the copy of registered power of attorney dated 30/06/2014, it appears that the said was executed by the defendant in favour of the plaintiff in respect of suit property, whereby plaintiff was authorized to execute sale deed in his favour or in favour of any purchaser and handover possession of suit property. The recitals of power of attorney shows that the plaintiff was authorized to had over the possession of the suit property, which clearly indicate that the possession of the suit property was given by defendant to the plaintiff at the time of execution of the said power of attorney. Admittedly, on the basis of said power of attorney registered sale deed dated 13/07/2017, of the suit property, was executed in favour of plaintiff. The recital of sale deed shows that the possession of suit property is with the plaintiff.

11] The copy of registered power of attorney, registered sale deed, mutation entry and 7/12 extract from the year 2017-2018 of suit field shows the name of plaintiff as possessor of the suit field therefore there is prima-facie case and balance of convenience in favour of plaintiff. So also revenue record shows that the plaintiff has sown soyabin in the suit property. Prima facie it appears that the plaintiff is in actual and physical possession of suit property at the time of filing of suit and therefore if the injunction is not granted the plaintiff will suffer irreparable loss. In the circumstances, the plaintiff has made out the prima facie case, balance of convenience and irreparable loss in his favour. This aspect has not been considered by the trial Court while passing the impugned order. Therefore, the

order passed by trial Court sought interference. Hence, I answer point No.1 and 2 accordingly. In the result, in answer to point No.3, I pass following order.

ORDER

1. *Appeal is allowed.*
2. *Order dated 17.10.2018 passed by Civil Judge Junior Division, Kuhi below Exh.5 in R.C.S.No.43/2018 is hereby set aside and application Exh.5 of plaintiff is allowed.*
3. *The defendant, his legal heirs or any other person on his behalf are hereby temporarily restrained from disturbing, interfering, obstructing to peaceful possession of the plaintiff, over the suit property till disposal of the suit.*
4. *Costs in cause.”*

9. This Court finds that the well known parameters for grant of temporary injunction have been taken into consideration by the appellate Court and in view of rival claims regarding possession made in affidavits of witnesses filed on behalf of the parties, reliance placed on statements made in the registered Sale Deed and the registered power of attorney is found to be correct.

10. In view of the above, there is no merit in the present writ petition and accordingly, it is dismissed.

JUDGE