

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

Writ Petition No. 4834/2021

Ganpat s/o Bhiwaji Avghad and ors.

..VS..

Vinod s/o Narayan Avghad and ors.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri A.J. Thakkar, Advocate for the petitioners

CORAM : AVINASH G. GHAROTE, J.

DATED : 21/12/2021

Heard Shri A.J. Thakkar, the learned Counsel for the petitioners, who challenges the order dated 08.08.2019 passed by the learned trial Court in R.C.S. No. 51/2019, whereby the application below Exh. 5 came to be allowed and application below Exh. 28 filed by the defendants who had raised the counter-claim, came to be dismissed. The appeals filed challenging the aforesaid orders vide Misc. Civil Appeal No. 12/2019 and Misc. Civil Appeal No. 13/2019 came to be dismissed by the Appellate Court by the judgment dated 23.03.2021.

2. Shri A.J. Thakkar, learned Counsel for the petitioners, submits that Ganpat, Tulshiram and Narayan were the joint owners of the several agricultural fields, including Gut Nos. 100/2 and 117/3 situated at Mauza Yeota, Tq. Karanja Lad, Dist. Washim and, therefore, after the demise of Narayan on 6.12.2018, Ganpat came into

possession of the aforesaid lands, considering which, both the Courts below ought to have granted Exh. 28, the application for injunction filed by the defendant/petitioner - Ganpat. He, therefore, submits that the impugned order, which ignored this position, cannot be sustained.

3. It is material to note that even as per the admission made by Shri A.J. Thakkar, learned Counsel for the petitioners, there was a partition in the year 1990 between Ganpat, Tulshiram and Narayan, in which the property earlier jointly held by them was partitioned, in which Narayan received portion of Gut No. 100/2 admeasuring 3 H. 76 R., as well as land of Gut No. 117/3. The plaintiff/Vinod has come up with a case that during the lifetime of the Narayan, he had executed Will on 03.04.2013, in favour of plaintiff/Vinod, thereby bequeathing whatever land was received by him in the partition of the year 1990, in favour of the said plaintiff/Vinod and it is on the basis of Will of Narayan, that the suit came to be filed and in which the application for injunction as filed by plaintiff/Vinod, claiming to be cultivating in possession, has been allowed, restraining the petitioner/defendant from interfering in the same. Once, it is an admitted position, that partition took place between Ganpat, Tulshiram and Narayan in the year 1990, the same would indicate that thereafter all three of them were independently cultivating the land, which fell

to their respective shares. That being the position, it was necessary for defendant/petitioner - Ganpat to place something on record, indicating that he is being put in possession of the land of Gut Nos. 100/2 and 117/3 consequent to the demise of Narayan on 06.12.2018. Both the Courts had concurrently found that there is nothing on record to indicate or substantiate the claim of Ganpat that he came into possession of the said properties, in view of which, the findings rendered by the Courts below that the plaintiff/Vinod was in possession, on account of the Will, executed by late Narayan in his favour during his life time cannot be faulted with. The reliance placed on the 7/12 Extract at record (page 36), by Shri A.J. Thakkar, learned Counsel, to contend that the same was issued on 22.02.2021 and indicated the name of Ganpat therein is of no assistance, for the reason that it also indicate the name of the Tulshiram and Narayan, and would naturally relate to pre-partition position and not otherwise.

4. In view of the above position, I do not find any reason to interfere in the well reasoned order of the trial Court as well as judgment of the First Appellate Court. Therefore, there is no merit in the petition. Accordingly, the writ petition is dismissed. No costs.

JUDGE

SANDIP
MAHADEV
GATE

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