

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**NAGPUR BENCH : NAGPUR****WRIT PETITION NO. 3138 OF 2021**

(Satish Govindrao Khalashe vs. Dilip S/o Namdeo Nagrale and anr.)

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Ms. Prajakta Chaudhari, Advocate for petitioner.

CORAM : MANISH PITALE J.

DATE : 25/08/2021

By this writ petition, the petitioner (original defendant) has challenged orders passed by the Appellate Court whereby an application for stay filed on behalf of the petitioner was rejected and an application seeking review of the order was also rejected.

2. The respondents in the present case i.e. original plaintiffs filed a suit for declaration and permanent injunction claiming that they were in exclusive possession of the suit property and that the petitioner was not entitled to disturb their possession over the suit property. The learned counsel appearing for the petitioner is relying upon an amendment carried out in the plaint and a specific prayer added on behalf of the respondents for handing over

possession of the suit field to them. It is the contention of the petitioner that when such amendment was made and it was conceded on behalf of the respondents that they were not in possession of the suit property, the application for stay moved before the Appellate Court ought to have been entertained.

3. But a perusal of the judgment and order dated 02/08/2018 passed by the Court of Civil Judge Senior Division, Hinganghat, on the suit filed by the respondents would show that the suit was decreed and the petitioner and other persons were restrained from disturbing the possession of the respondents in the suit field. In the said judgment and order, the aforesaid Court has specifically answered issue pertaining to exclusive possession of the respondents in the suit property in the affirmative. It is also found that the petitioner had threatened to dispossess the respondents from suit property. In the face of the aforesaid findings, it is obvious that the alternative prayer for grant of possession made on behalf of the respondents was rendered meaningless.

4. In this backdrop, when the prayer made on behalf of the petitioner in the application for stay before the Appellate Court is perused, it becomes

obvious that such a prayer could not have been granted. It is only after the finding regarding exclusive possession rendered in favour of the respondents is upset, if at all, by the Appellate Court that the question would arise of holding the direction of restraining the petitioner as being erroneous. There is, in fact, no prima facie case made out to show that the said finding regarding exclusive possession rendered by the aforesaid Court could be said to be erroneous.

5. In view of the above, this Court finds that there is no error committed by the Appellate Court while passing the impugned order.

6. Accordingly, the writ petition is dismissed.

JUDGE