

1

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

WRIT PETITION NO.3918 OF 2017

Gulabrao Balupant Rathod,
Aged 59 years, occupation agriculturist,
R/o Narayan Nagar, Morshi Road,
Amravati, tahsil and district Amravati. **Petitioner.**

:: VERSUS ::

1. Anand Parmanand Vyas,
Age 46 years, occupation business,
R/o Bhaddhoka Chowk, near house of
Sevakram Bikaner,
District Jaipur (Rajasthan).

2. Subhash Babarao Chauhan,
Age 42 year, occupation agriculturist,
R/o Chirodi, tahsil Chandur Rly., district
Amravati.

3. Marotrao Govindrao Girhase,
Age 52 years, occupation
R/o Thugaon, tahsil Chandur Rly.,
district Amravati. **Respondents.**

=====

Shri N.B.Bargat, Counsel for the petitioner.
None for respondent Nos.1 and 2.
Shri J.J.Chandurkar, Counsel for respondent No.3.

=====

CORAM : **VM.DESHPANDE, J.**
DATE : **JANUARY 25, 2021**

ORAL JUDGMENT

1. Heard learned counsel Shri N.B.Bargat for the petitioner and learned counsel Shri J.J.Chandurkar for respondent No.3. For disposal of this writ petition, presence of respondent No.1 is not required. Though respondent No.2 is duly served, nobody is appearing on his behalf. **Rule.** Rule is made returnable forthwith. Heard finally by consent of learned counsel of parties.

2. The petitioner is original plaintiff. He filed a civil suit bearing Special Civil Suit No.172/2014 against respondent Nos.1 and 2 for specific performance of contract. During the pendency of the suit, it is reported that, respondent No.3 is made as defendant.

3. Be that as it may, the plaintiff filed an application for temporary injunction under order XXXIX Rules 1 and 2 in Special Civil Suit No.172/2014. Learned 4th Joint Civil Judge Junior Division, Amravati partly allowed the application inasmuch as injunction claimed by the plaintiff restraining defendants from disturbing his possession was rejected but defendants were directed not to create any third party interest.

3

4. The plaintiff, thereafter, preferred a Misc. Civil Appeal No.32/2015. The said appeal was heard on its own merits and vide judgment dated 20.2.2017 learned Judge of the Lower Appellate Court dismissed the appeal observing that the plaintiff has failed to demonstrate that he is in possession of the disputed land.

5. Today, it was informed to this Court that Special Civil Suit No.172/2014 has ripe up for its final hearing inasmuch as evidence has already commenced and it is going on.

6. In this view of the matter and looking to concurrent finding of facts recorded by both Courts below in respect of possession of the plaintiff, this writ petition is disposed of by following order:

ORDER

(1) The writ petition is dismissed confirming order dated 13.7.2015 passed by learned 4th Joint Civil Judge Junior Division, Amravati below Exhibit 5 in Special Civil Suit No.172/2014

4

together with judgment and decree dated 20.2.2017 passed by learned 4th District Judge, Amravati in Misc. Civil Appeal No.32/2015.

(2) Learned Judge on whose file Special Civil Suit No.172/2014 is pending shall decide the said as expeditiously as possible and preferably within a period of one year from the date of this order.

The writ petition is disposed of. Rule is discharged accordingly.

JUDGE

!! BRW !!

...../-