

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

WRIT PETITION NO. 3069 OF 2020

- 1) Moreshwar S/o Gopalrao Khubalkar
Since deceased through Legal heirs,
- 1-i) Sou. Sushila W/o Moreshwar Khubalkar,
Aged about 58 years, occ: Agriculturist,
- 1-ii) Pankaj S/o Moreshwar Khubalkar,
Aged about 38 years, occ: Service,
- 1-iii) Surendra S/o Moreshwar Khubalkar,
Aged about 26 years, occ: Service,
- 1-iv) Mahendra S/o Moreshwar Khubalkar,
Aged about 28 years, occ: Agriculturist,
- 1-v) Ku. Vaishali D/o Moreshwar Khubalkar
alias Sou. Vaishali Wd/o Yuvraj Kamdi,
Aged about 30 years, occ: Household,

All petitioners No.1(i) to 1(v) are
Resident of Village-Khubala, Post Khubala,
Tah. Saoner, Dist. Nagpur

...PETITIONERS

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

Sou. Vandana W/o Jayant Gundar
Aged about 53 years, Occ: Agriculturist,
through her Power of Attorney holder
Shri Jayant S/o Punjaji Gundar,
Aged about 56 years, Occ: Service,
Presently resident of Plot No.78,
Diamond Nagar, Beside Sant Gajanan
Maharaj Mandir, Ramna Maruti Mandir,
Ramna Maruti Road, Nagpur.

...RESPONDENT

Mr. Y. R. Sonkusare, Advocate for petitioners.
Dr. Mrs. R. S. Sirpurkar, Advocate for respondent.

CORAM:- V. M. DESHPANDE, J.
DATED :- JANUARY 25, 2021.

ORAL JUDGMENT

1. Rule. Rule is made returnable forthwith. Heard finally by consent of learned counsel for parties. Heard Mr. Sonkusare, learned counsel for petitioners and Dr. Mrs. Sirpurkar, learned counsel for the respondent.

2. Challenge in this writ petition is to judgment and order passed by learned District Judge-9, Nagpur dated 22.09.2020 in Misc. Civil Appeal No.102/2020, arising out of order passed by learned Civil Judge Junior Division, Saoner dated 05.08.2020 below Exh.-5 and Regular Civil Suit No.34/2020. Learned lower appellate Court allowed Misc.Civil Appeal No.102/2020 filed by the present respondent by setting aside order passed by learned Civil Judge Junior Division, Saoner below Exh.-5.

3. Respondent-plaintiff filed suit for specific performance of contract. In the said suit, she filed an application for temporary

injunction claiming therein that the predecessor in title of the petitioner deceased Moreshwar has placed her in possession of the suit property. Before learned trial Court, the present petitioner denied said fact and averred that, in fact, they being legal representatives of Moreshwar, they are in possession of the suit property. Various documents from both sides were filed on record. Learned Civil Judge Junior Division, Saoner, relying on the entries made in revenue record found that it is the petitioners, who are in possession of the property and therefore dismissed the application filed on behalf of the respondent.

4. The learned lower appellate Court was of the view that there is a possession receipt dated 02.03.2007 and affidavit of the deceased Moreshwar dated 19.06.2009, which can be safely relied upon to reach to the conclusion that the respondent-plaintiff was placed in possession by Moreshwar.

5. Deceased Moreshwar has filed an application before the Superintendent of Land Records, Nagpur for correction of Case No.3878 dated 16.05.2008 stating therein that his signature was fraudulently obtained by respondent-Vandana and she was

made party in that proceeding. This application is dated 23.06.2008 and learned appellate Court then granted injunction in favour of respondent-plaintiff.

6. This Court (Coram: Manish Pitale, J.) on 08.12.2020, after hearing the parties directed that the parties shall maintain status quo as on 08.12.2020. The suit filed by respondent is still awaiting the verdict. It is stated before me that petitioners have already filed their written statements and pleadings are complete.

7. In view of the interim order passed by this Court on 08.12.2020 and looking to the fact that there are two sets of documents, one shows prima facie possession of the petitioners whereas other shows prima facie possession of the respondent, in my view, it will be beneficial for both the parties to get the lis decided on its own merit. The parties will get the opportunity of adducing detailed evidence, both oral as well as documentary and they will be entitled to prove the documents filed on record by them. Hence, I pass the following order.

ORDER

- (i) The writ petition is disposed of without touching to the merits or demerits of the order passed by

learned District Judge-9, Nagpur in Misc. Civil Appeal No. 102/2020.

(ii) Regular Civil Suit No. 34/2020 filed by respondent and which is pending on the file of learned Civil Judge Junior Division, Saoner, shall be decided by the said Court by giving an opportunity of hearing, adducing evidence, documentary as well as oral by the parties to the suit, within a period of 1 ½ years from the date of receipt of this order.

(iii) Till decision of said civil suit, order directing the parties to this writ petition to maintain status quo shall remain in operation.

Rule accordingly. No order as to costs.

JUDGE

kahale