

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

WRIT PETITION NO. 2971 OF 2020

PETITIONERS : 1] Jagdish Prabhakar Chiddarwar
Aged 43 year, Occu. Agriculturist

2] Sau. Pradnya W/o Jagdish Chiddarwar,
Aged about 32 years, Occu. Household

Both R/o Sant Dnyaneshwar Nagar, Pusad,
Tq. Pusad, Dist. Yavatmal.

// VERSUS //

RESPONDENT : Gajanan Murlidhar Padmawar,
Aged 50 years, Occu. Agriculture,
R/o Yerawar Layout, Behind Narjeevan Convent,
Pusad, Tq. Pusad, Dist. Yavatmal.

Shri P. S. Chauhan, Advocate for the petitioners.
Shri V. R. Thote, Advocate for the respondent sole

CORAM : V. M. DESHPANDE, J.
DATED : JANUARY 13, 2021

ORAL JUDGMENT

1. **RULE.** Rule is made returnable forthwith. Heard finally by consent of the learned counsel for the parties.

2. Shri P.S. Chauhan, learned counsel is representing the petitioners, who are the original defendants and Shri V.R. Thote, learned counsel is representing the respondent, who is the original plaintiff.

3. This writ petition is filed seeking direction to set aside the order passed by the learned Joint Civil Judge, Junior Division, Pusad on 29.10.2020 (Annexure-M), below application (Exh.79) in Regular Civil Suit No. 113 of 2019, thereby granting police aid to the respondent. Subsequently, an application (Exh.83) was moved by the respondent/original plaintiff stating therein that though, the order was passed in favour of the plaintiff to give police aid, when he went in the police station, it was informed that unless and until there is permission from the Superintendent of Police, police aid cannot be granted. Therefore, application (Exh.83) was moved for extension of 15 days. On the said application, following order was passed which is under challenge :-

“No say filed. Considering reasons mentioned in application, time is extended till 20.11.2020.”

4. The respondent/plaintiff filed a suit for permanent injunction, claiming injunction that the defendants i.e. present petitioners be restrained from disturbing the possession of the plaintiff. In the said suit, an application for temporary injunction under Order 39 Rules 1 and 2 was filed by the plaintiff. The said application is at Exh.5. Defendant no.1 in the said suit also filed an application for temporary injunction. The said application is at Exh.35. The learned Joint Civil Judge, Junior Division, Pusad by common order dated 17.01.2020, allowed the application (Exh.5) filed by the respondent/plaintiff and dismissed the application (Exh.35) filed by the defendant no.1.

5. Before this Court, at bar a statement is made by the learned counsel for the petitioners that the petitioners have challenged the order granting temporary injunction in favour of the respondent/plaintiff before the Appellate Court. The appeal is registered as Misc. Civil Appeal No. 06 of 2020 and the said appeal is pending on the file of the learned Appellate Court.

6. Be that as it may. Mr. Thote, learned counsel for the respondent invited my attention to the affidavit filed on behalf of

respondent – Gajanan Murlidhar Padmawar that in pursuance to the order of granting police aid, Rs.29,944/- with Police Station, Pusad and the police aid was given and the order was complied and therefore, this writ petition has rendered infructuous.

7. Shri Chauhan, learned counsel for the petitioners submitted that he will file the counter affidavit.

8. In view of the aforesaid, I do not propose to keep this matter pending.

9. It is an admitted position that the appeal filed by the petitioners challenging the order of injunction in favour of the respondent is still pending before the Appellate Court. The Appellate Court has to decide the said appeal independently after considering the pleadings and various documents, which are placed on record to test correctness of the order passed by the learned trial Court granting injunction in favour of the respondent/plaintiff. Merely because police aid was granted in favour of the respondent, in my view, the Appellate Court shall not consider the same that the plaintiff is in possession of

the land especially when defendant no.1 had also filed an application (Exh.35) claiming that he is in possession.

10. In that view of the matter, I dispose of this writ petition with an observation that the Appellate Court shall decide Appeal No. 06 of 2020 independently strictly in accordance with law and merely because police aid was granted in favour of the respondent/plaintiff, that itself cannot be a ground to record a finding that the plaintiff is in possession of the suit property.

11. It is not disputed before this Court that the appeal is now kept for final hearing. Since, both the parties are claiming that they are in possession of the disputed land, it will be proper on the part of learned Appellate Court to decide the appeal expeditiously as possible preferably within a period of three months from the date of receipt of this order.

Rule accordingly. No order as to costs.

JUDGE

Diwale

Parag
Diwale

Digitally signed
by Parag Diwale
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2021.01.15
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