

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

WRIT PETITION NO.4975/2021

Govinda Dnyanaba Bobde

...Versus...

Narayan Rajaram Bobde

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

Court's or Judge's orders

Shri J.B. Gandhi, Advocate for petitioner

CORAM : AVINASH G. GHAROTE, J.

DATE : 06/12/2021

1. Heard Shri J.B. Gandhi, learned Counsel for the petitioner, who claims that the petitioner was put in possession of the part of Gat No.799, admeasuring .86 R under an agreement dated 30/4/2000 by the respondent/plaintiff and therefore, his possession was required to be protected.

2. The plaintiff, has denied not only the agreement but the factum of the petitioner/defendant being put in possession. Not only this, the counter-claim filed by the defendant before the trial Court has been rejected on an application under Order 7 Rule 11 (d) of the Code of Civil Procedure by an order dated 26/7/2019, as a result of which, as of date, there is no counter-claim existing. The learned

trial Court by an order dated 26/7/2019 rejected not only Exh.5, filed by the plaintiff but also Exh.19, filed by the present petitioner/defendant. The Appellate Court, has by the impugned judgment, allowed Exh.5 and maintained the order dismissing Exh.19. It is, thus, apparent that in so far as Exh.19 is concerned, both the Courts below have concurrently found that the defendant was not in possession, may be the finding by the Appellate Court is on the ground that the counter-claim was rejected. The alleged agreement, having being denied, the same will have to be proved by the defendant as per law, however, as of now, it is not permissible to hold that the petitioner/defendant has been in possession of the above described property in view of what has been found by the Courts below, with which I am in agreement with, and so also, considering the rejection of the counter-claim, in view of which, I do not find any infirmity in the impugned order below Exhs.5 and 19 as well as the judgment of the learned Appellate Court, which holds that the original plaintiff is in possession of the land of Gat No.799. I, therefore, do not see any merit in the writ petition. The same is accordingly dismissed. No costs.

(AVINASH G. GHAROTE, J.)

Wadkar

Digitally signed by SHAILENDRA
SUKHADEORAO WADKAR
Signing Date: 06.12.2021 19:19