

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

WRIT PETITION NO.4698/2021

Gurucharansingh s/o Shersingh Andherele,
Aged about 51 years,
Occ.: Contractor and Agriculturist,
R/o. Guru Govindsingh Chowk,
Nagar Parishad Colony,
Near Khandelwal Lawn, Khadan, Akola,
Tah. and District – Akola.

..... **PETITIONER**
(Ori. Plaintiff)

// VERSUS //

1. The Christian Missionary Alliance
Church of India, (Maharashtra), PTR-D-1,
Akola, Through its President,
Pathrus Shamrao Ingle,
Aged about 80 years, Occupation – Trustee,
R/o. Gautam, Nagar, Old RTO Road,
Near Mahesh Bhavan, Akola,
Tah. And District – Akola.
2. Satish Joseph Kadam,
Aged about 71 years, Occupation – Retired,
R/o. Christian Colony, Near Government Godown,
Khadan, Akola, Tah. & District – Akola.
The Secretary of the Christian
Missionary Alliance Church of India,
Maharashtra, PTR D-1, Akola,
Tah. And District – Akola.

.... **RESPONDENTS**
(Ori. Defendants)

Mr. J. B. Gandhi, Advocate for petitioner.
Mr. S. A. Mohta, Advocate for respondents.

CORAM : AVINASH G. GHAROTE, J.
DATED : 29/11/2021

ORAL JUDGMENT :

- 1] **Rule.** Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

2] Heard Mr. Gandhi, learned counsel for the petitioner and Mr. Mohta, learned counsel for the respondents.

3] This petition challenges the order below Exh.5, passed by the learned Trial Court, rejecting the application for injunction and the judgment of the learned District Judge – 2, Akola, confirming the rejection. It is contended by Mr. Gandhi, learned counsel for the petitioner, that there was an agreement of sale in favour of the petitioner executed by the defendant on 19.08.2009, whereunder the respondent-Trust agreed to sell the suit property in favour of the petitioner/plaintiff for specific performance of which Special Civil Suit No.3 of 2021 is filed. In the said suit an application below Exh.5 came to be filed, which came to be rejected by the order dated 16.08.2021 by the learned Trial Court on the ground that the subsequent registered agreement of lease dated 20.04.2011 had come to an end in the year 2019 by efflux of time and contrary pleadings were made by the petitioner regarding payment of part consideration, which under the agreement was for a sum of Rs.10,40,000/-, as against which, the petitioner claimed to have paid Rs.25,00,000/- to the defendant. Considering this contrary claim, the learned Trial Court came to a conclusion, that there existed a deep rooted conspiracy to grab the property owned by the defendant-Trust and rejected the application for injunction. The learned Appellate Court, by the order dated 25.10.2021 followed suit and considering the

observations made by this Court in its order dated 17.01.2013 in Writ Petition No.5928 of 2012 and the judgment in Second Appeal No.297 of 2011 and so also the order in Sou-Motu Enquiry No.1164 of 2011, dated 28.02.2012, dismissed the appeal.

4] Mr. Gandhi, learned counsel for the petitioner submits that both the Courts below, have not considered the factum of the execution of the lease in favour of the petitioner in the proper prospective, which is also the position in respect of the above orders.

5] Mr. Mohta, learned counsel for the respondents supports the impugned orders and submits that the petitioner was not placed in possession of the property in question, and therefore, was not entitled to injunction.

6] No doubt that in the agreement dated 19.08.2009 executed by the defendant in favour of the plaintiff, regarding sale of the subject property, there is clause No.5, indicating the plaintiff having been put in possession, however, since the document is not registered and insufficiently stamped, the same cannot be looked into for this purpose, in view of the relevant provisions of the Maharashtra Stamp Act as well as Section 49 of the Indian Registration Act read with Section 53(A) of the Transfer of Property Act.

7] The theory of the plaintiff in put in possession of the suit property, under the agreement dated 19.08.2009, is nullified by the agreement of lease dated 20.04.2011 executed by the defendant in favour of the plaintiff, which categorically records that the defendant was in possession of the property on the date of execution and registration of this deed of lease. It is however, material to note, that this deed of lease dated 20.04.2011, which is not disputed by the defendant, categorically records the placing of the plaintiff in actual physical possession of the suit property and the plaintiff was to continue in such possession for a period of nine years from the date of execution and registration of the lease. Thus, this document categorically records the plaintiff being put in possession and his right to continue in possession for the duration of the lease. The agreement of lease is a registered document and has its own value in law.

8] The contention, that in Writ Petition No.5928 of 2012, the Court while dismissing the same on 27.01.2013 had observed that the suit land had not been allotted to any party as of now, and the petition was filed only on an apprehension that the petitioner's offer may be rejected though it would be the highest one, has to be considered in the context, in which it was passed. It is necessary to note that, the petition was filed by one Dnyandeo Somaji Sirsat against the present petitioner and the defendant-Trust. The order dated 17.01.2013 does not record

that either the plaintiff or the defendants were noticed in this petition and heard, so as to enable them to bring to the notice of this Court the lease deed dated 20.04.2011.

9] Mr. Gandhi, learned counsel for the petitioner, upon instructions, makes a categorical statement, that no notices were issued in Writ Petition No.5928 of 2012 to the respondents and the same was dismissed without the plaintiff or defendants being summoned. That being the case, the observations as made in the order dated 17.01.2013, would clearly not be binding upon either the plaintiff or the defendant herein. In Second Appeal No.297 of 2011, which was filed by Dnyandeo Somaji Sirsat Vs. the present respondents/defendants and its office bearers, a finding has been recorded by the Court that it was not possible for the Court to hold that the appellant therein was in lawful possession of the suit property. That finding also in my considered opinion does not assist the respondents/defendants, in any manner whatsoever, for the reason that the Trust had not brought the registered agreement of lease, dated 20.04.2011, to the notice of the Court rendering the judgment in second appeal. Sou Motu Enquiry No.1164 of 2011, though considers all these things, however, in an incorrect prospective and does not dwell upon the factual position, as contained in the agreement of lease dated 20.04.2011, which records the plaintiff in put in possession.

10] Though, it is contended by Mr. Mohta, learned counsel for the respondents, that under the lease deed dated 20.04.2011, the plaintiff/petitioner was never put in possession, however, except for a mere statement, there is nothing on record, to demonstrate that the defendant- Trust, in spite the lease deed dated 20.04.2011, continues to be in possession. Though, the order dated 28.02.2012, passed in Sou Motu Enquiry No.1164 of 2011 directs the office bearers of the defendant-Trust to review their decision of leasing out the agricultural land, which is leased out to the plaintiff/petitioner no such decision has as yet been taken, which position is admitted by Mr. Mohta, learned counsel for the respondents. In fact, the order in Sou Motu Enquiry dated 28.02.2012, would itself indicate the admission on part of the defendant as recorded in para 6 thereof, that the land in question was given to the present petitioner on lease under the lease deed dated 20.04.2011. This being the position, the execution of the lease deed dated 20.04.2011, clearly stood to be an admitted position by the defendant-Trust itself, which would indicate that the defendant- Trust would also be bound by the clauses in the lease, which indicated the plaintiff being put in possession of the suit property.

11] It cannot be disputed, that once the position emerges that the plaintiff was put in possession may be not under the agreement of sale, but under the lease-deed dated 20.04.2011, the possession of the

plaintiff, can only be taken by following due process of law and not otherwise.

12] That being the position, in my considered opinion, the impugned order and judgment of the Courts below, which do not take into consideration, the lease deed dated 20.04.2011, and the order dated 28.02.2012, in the context in which they have been executed/passed, the impugned order of the learned Trial Court and the judgment of the Appellate Court cannot be sustained. They are therefore, quashed and set aside. The application below Exh.5, as filed by the plaintiff, is hereby allowed, however, subject to the condition, that the plaintiff shall have to deposit charges for occupation of the land as the plaintiff is a lessee holding over.

13] Mr. Gandhi, learned counsel for the petitioner, on instructions, submits that the petitioner would be willing to pay the lease amount with 10 % increase, however, considering that the order dated 28.02.2012 records that at that point of time, there was an offer of Rs.1,21,000/- per annum, the petitioner shall pay, considering the passage of time, a sum of Rs.2,00,000/- per annum to the defendant from the date of expiry of the lease, till such time the petitioner continues in possession of the suit property.

14] It is made clear that the payment of such compensation, shall not be construed to have conferred any right upon the plaintiff of any manner whatsoever and the defendant-Trust shall be free to initiate appropriate proceedings for recovery of possession as against the present petitioner/plaintiff, in light of the terms, of the agreement of lease dated 20.04.2011.

15] It is made clear that the entire arrears including the current compensation, shall be deposited by the petitioner/plaintiff, within a period of two weeks from today, in the learned Trial Court.

16] The petition is allowed, in the above terms. Rule is made absolute in the aforesaid terms. No costs.

(AVINASH G. GHAROTE, J)

Sarkate.