

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.11936 OF 2021

DEVIDAS DAULATRAO DADHALE
VERSUS
YASHWANT PANDITRAO KADAM AND OTHERS

...
Advocate for the Petitioner : Shri P.S. Koshti h/f Shri Kharate Gajanan T.
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CORAM: SMT. BHARATI H. DANGRE, J.

DATE :- 19th January, 2022

Per Court:

1. Heard the learned counsel for the petitioner/ defendant No.1, who is aggrieved by the concurrent findings recorded against him by two Courts.
2. The respondents/ plaintiffs filed the suit numbered as RCS No.97/2018 on 16.04.2018 claiming perpetual injunction against the petitioner and restraining him from interfering in his peaceful possession in respect of the suit land described in the plaint. In the said suit, the plaintiffs filed an application for temporary injunction vide exhibit-5. The defendants filed their written statement and also opposed the application exhibit-5, by specifically pleading that the plaintiffs were never in possession of the suit property though it was admitted that the plaintiffs' father Panditrao had purchased 2 H 05 R land from Daulatrao (father of

defendants). The specific pleading is to the effect that the suit property was included in the previous suit bearing RCS No.122/2006 and the said suit was dismissed by the Trial Court, but in an appeal, it was decreed. The Second Appeal, preferred by the defendants in the said suit RCS No.122/2006, came to be dismissed and the execution proceedings vide Regular Darkhast No.27/2012 were pending.

3. On consideration of the facts involved and on perusal of the copy of the sale deed executed by Daulatrao, the father of the defendants, in favour of Panditrao (father of the plaintiffs), reflecting that the possession of the suit property was handed over by Daulatrao to Panditrao and by making reference to the affidavits filed by four persons, who had deposed that Panditrao was in possession of the suit property and after his demise, the plaintiffs are in possession, the learned Judge recorded prima facie case in favour of the plaintiffs since they were found to be in possession of the suit property after demise of their father Panditrao and before that, the said Panditrao was in possession of the property till his demise. In the wake of the above, temporary injunction came to be granted, which was upheld by the Appellate Court by dismissing the appeal filed by the petitioner on 11.10.2019.

4. On hearing the learned advocate for the petitioner, who has specifically argued before me that the suit filed by him at an earlier point of time, seeking declaration in respect of the same suit property, is decreed

and the execution proceedings are pending. This fact has been specifically adverted to by the learned Courts while deciding the application exhibit-5. In any case, the order of injunction against the present petitioner and in favour of the plaintiffs in RCS No.97/2018, is operating since 14.09.2018 and in this circumstance, I deem it expedient to direct the learned Trial Court to determine the proceedings in the civil suit within a stipulated period and in any case, within six months from today. In view of the finding rendered by the Trial Court regarding prima facie case, balance of convenience and irreparable loss, in favour of the plaintiffs in the wake of the specific finding that the plaintiffs are in possession of the suit property and they have been able to demonstrate so before the Trial Court, I am not inclined to disturb the said findings after a gap of four years since its existence.

5. Upholding the impugned orders and by issuing the direction to the Trial Court to culminate the proceedings in RCS No.97/2018 within a period of six months from today, this Writ Petition is dismissed. Needless to state, both the parties shall render their cooperation to the Trial Court in concluding RCS No.97/2018 expeditiously.