

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3528 OF 2016

MANOHAR JATRYA GAVIT
VERSUS
ASHOK KASHIRAM GAVIT AND OTHERS

...

Advocate for Petitioner : Mr. Sangharsh Waghmare
Advocate for Respondent No. 1: Mr. A.A. Joshi h/f. Mr. S.V. Natu
Advocate for Respondents No. 2 to 13: Mr. D.B. Chaudhari

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 7th APRIL, 2022

ORDER :

1. This petition challenges the order passed by the learned District Judge-1, Nandurbar, in Miscellaneous Civil Appeal No. 17/2015, thereby allowing the application filed below Exhibit-5 by respondent/original plaintiff seeking temporary injunction against the defendant no. 1/petitioner.

2. The petitioner filed the said suit seeking relief of injunction that the respondent no. 1 shall not carry out any illegal construction on the suit property. The Trial Court rejected the temporary injunction application. The respondent challenged the same before the appellate Court and the appellate Court has allowed the

application and granted injunction against the petitioner.

3. I have heard the rival submissions of Mr. Sangarsh Waghmare, the learned advocate for the petitioner, Mr. A.A. Joshi holding for Mr. S.V. Natu, for respondent No. 1 and Mr. D.B. Chaudhari for respondents No. 2 to 13.

4. On perusal of record it is clear that the trial Court has not framed points while deciding Exhibit-5 application, as to who has made out a *prima facie* case, in whose favour balance of convenience lies and who will suffer irreparable loss. Documents placed on record by Respondent No. 1/original plaintiff i.e. Aadhar Card, school leaving certificate, etc, are ignored by the trial Court while passing the impugned order.

5. The Appellate Court was justified in holding that the respondent no. 1 has *prima facie* established that he is the son of Kashiram, and therefore, respondent No. 1 has made out a *prima facie* case for grant of injunction. The Appellate Court has rightly come to the conclusion that on the basis of documents placed on record by the

respondent No. 1, *prima facie* an inference has to be drawn that he is the son of Kashiram and he is entitled to succeed the property of Kashiram.

6. It is informed by the learned advocate for the petitioner that in the trial the plaintiff has led his evidence and the matter is pending for further evidence of plaintiff.

7. Taking into consideration the fact that the trial Court has passed unreasoned order by ignoring the documents placed on record by respondent/plaintiff, in my opinion, the Appellate Court was right in clamping injunction against the petitioner/defendant No. 1. I see no reason to interfere in the well reasoned order passed by the Appellate Court. There is no merit in the petition, hence the writ petition is dismissed.

8. Considering the fact that the suit is of 2015, the trial Court shall decide the same within six months from today.

[NITIN B. SURYAWANSHI]