

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

WRIT PETITION NO. 7381 OF 2022

1. Tukaram S/o Dasa Paul,
Age : 76 Years, Occu. : Agriculture,

2. Ranubai @ Rajubai W/o Tukaram Paul,
Age : 66 Years, Occu. : Agriculture,

Both R/o Alani, Tq. & Dist. Osmanabad. .. Petitioners

Versus

Prashant S/o Shivaji Naikwadi,
Age : 42 Years, Occu. : Agril & Service,
R/o Yedashi, Tq. & Dist. Osmanabad. .. Respondent

Shri Yashwant P. Jadhav, Advocate for the Petitioners.
Shri Shrikant Veer, Advocate for the Respondent/Sole.

**CORAM : SANDEEP V. MARNE, J.
DATE : 12TH OCTOBER, 2022.**

ORAL JUDGMENT :

. Rule. Rule made returnable forthwith. With the consent of parties matter is taken up for final hearing.

2. By the present petition, the petitioner challenges order dated 20.06.2022 passed by the District Judge, Osmanabad in Misc. Civil Appeal No. 11 of 2022. By that order, the District Judge has allowed the miscellaneous appeal of the plaintiff-respondent and has set aside the order dated 15.12.2021 passed by the Joint Civil Judge Junior Division, Osmanabad, rejecting

interim relief in favour of the plaintiff-respondent on application below Exhibit 05. By order dated 20.06.2022, the District Judge has restrained the petitioners-defendants from obstructing peaceful possession of the plaintiff-respondent over the suit property till disposal of R.C.S. No. 429 of 2021.

3. The plaintiff-respondent has instituted suit R.C.S. No. 429 of 2021 for injunction simplicitor. Plaintiff is not claiming title over the property in that suit. The possession over the property is claimed on the basis of a lease deed claimed to have been executed on 17.02.2011 by the defendants in favour of the plaintiff. It is common ground that the land which is shown to have been leased in favour of the plaintiff is covered by the provisions of Section 29 of the Maharashtra Agricultural Lands (Ceiling on Holding) Act 1961 (for short “Act of 1961”), under which there is specific bar for transfer of the property by any means, which *inter alia* includes even lease. The document is executed on a stamp paper of Rs. 100/- and shown to have been executed before a notary. The document is not registered. However, there is an averment in the lease deed that the possession of the property came to be handed over. On the basis of this lease deed executed on 17.02.2011, the plaintiff instituted suit R.C.S. No. 429 of 2021 seeking injunction against the defendants.

4. In an application filed at Exhibit 05 seeking temporary injunction, the Trial Court was pleased to pass an order on 15th

December, 2021 rejecting the same. The plaintiff filed M. C. A. No. 11 of 2022 before the District Judge, who was pleased to allow the appeal and set aside the order dated 15.12.2021 passed by the Trial Court and has thereby granted injunction in favour of the plaintiff till disposal of the suit.

5. As observed hereinabove, there is a document on the basis of which plaintiff claimed possession over the property. That document is the lease deed allegedly executed by the defendants in favour of the plaintiff. However, even after execution of that deed on 17.02.2011, the name of the plaintiff has admittedly not been mutated to record of rights of the property. The 7/12 extract continue to show names of the defendants. More importantly in 8A extract, the names of the defendants are still being shown as cultivators in respect of the land. Thus, there are two documents before me. On the basis of unregistered notarized lease deed, possession is claimed by the plaintiff, whereas 7/12 and 8A extracts show the defendants to be in possession. As observed hereinabove, on account of provision of Section 29 of the Act of 1961, it is highly doubtful whether the plaintiff will be able to claim any rights in respect of property based on the lease deed. When lease of the property is clearly prohibited U/Sec. 29 of the Act of 1961, the objective behind the provision cannot be circumvented by execution of notarized deed and nor possession can be claimed on the basis of that document. In my opinion, therefore, there was no *prima facie* case in favour of the plaintiff for grant of temporary injunction during pendency of the suit.

6. Mr. Veer, learned counsel appearing for the respondent-plaintiff has relied upon the decision of the Supreme Court in **Maria Margarida Sequeria Fernandes and others Vs. Erasmo Jack de Sequera (Dead) through L.Rs.** reported in **(2012) 5 SCC 370** in support of his contention that even a trespasser is entitled to possession of his property and cannot be dispossessed except by following due process of law. The decision of the Apex Court, however, would be of little assistance to the respondent, as he has entered into a transaction which is expressly prohibited by law and is claiming possession on the basis of that document. Equally inapplicable is decision relied upon by Mr. Veer of this Court in the case of **Shamrao Ganpat Chintamni Vs. Kakasaheb Laxman Gorde** reported in **2008(2) Mh.L.J. 819**. Facts in that case are clearly distinguishable and, therefore, judgment is not applicable to the present case.

7. I find that the District Judge has already expedited trial of the suit and has directed both the parties not to seek unwanted adjournments and to proceed with the trial without delay. Mr. Veer, in fact, submits that plaintiff has already filed his affidavit in lieu of examination in chief. In such a situation, final decision in the suit would determine rights, if any, that the plaintiff may be entitled to on the basis of the lease deed.

8. Consequently, the order passed by the District Judge on 20.06.2022 in Misc. Civil Appeal No. 11 of 2022 is set aside and

order passed by the Joint Civil Judge Junior Division, Osmanabad on 15th December, 2021 below Exhibit 05 in R.C.S. No. 429 of 2021 is restored. The writ petition is accordingly allowed. Rule is made absolute in above terms.

9. After the judgment is dictated, Mr. Veer, learned counsel for the respondent-plaintiff prays for stay of this judgment for a period of two weeks. Considering the fact that, there was no injunction operating in favour of the plaintiff since 15.12.2021 till the order in appeal was passed on 20.06.2022, the request made by Mr. Veer is rejected.

[SANDEEP V. MARNE, J.]

bsb/Oct. 22