

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

17 WRIT PETITION NO.9804 OF 2018

- 1) Sau. Shilabai w/o Baliram Maradkar
Age: 44 years, Occu.: Household & Agri.
- 2) Baliram s/o Vasudev Maradkar
Age: 59 years, Occu.: Agri.
- 3) Shivaji s/o Baliram Maradkar
Age: 34 years, Occu.: Agri.
- 4) Sambhaji s/o Baliram Maradkar
Age: 26 years, Occu.: Agri.

All R/o. Khuntegaon, Tq.Ausa,
District Latur.

..Petitioners
(Ori. Defendants)

VERSUS

Dhondiram s/o Dasu Kolhe
Age: 56 years, Occu.: Agri.,
R/o. Khuntegaon, Tq.Ausa,
District Latur.

..Respondent
(Ori. Plaintiff)

...
Advocate for Petitioners : Shri Avinash A. Phad
Advocate for Respondent : Shri Tukaram M. Venjane
...

CORAM : M.G.SEWLIKAR, J.

DATE : 12th September, 2022

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. With the consent of the parties, petition is taken up for hearing for final disposal at the stage of admission.

2. Respondent (original plaintiff) filed R.C.S. No.123 of 2017, which is pending before the Civil Judge, Junior Division, Ausa. Respondent alleged that he had agreed to purchase the property bearing Gut No.409 situated at Khuntegaon, Tq.Ausa, from the petitioners (original defendants). It was agreed that the petitioners would execute sale deed of the concerned property for consideration of Rs.2,50,000/-. Amount of Rs.2,00,000/- was given at the time of agreement of sale and the possession of the suit property was handed over to the respondent on the same day. Name of the tenant was recorded in the revenue record. It was, therefore, agreed that permission would be taken from the Collector to delete the names of the tenants. On 17th November, 2016, petitioners approached respondent and demanded remaining amount of Rs.50,000/-. On the same day, respondent gave Rs.50,000/- to the petitioners and the receipt was given by petitioner No.1 in favour of the respondent. Petitioner Nos.2 and 3 consented for the same. Since petitioner Nos.1, 2 and 3 failed to execute the sale deed, a suit for specific performance came to be filed. Alongwith the suit, application for temporary injunction was filed.

3. The learned trial Court restrained the petitioners from creating third party interest in the suit land till the decision of the

suit but rejected application for temporary injunction. This order was challenged by the respondent before the District Court. The District Court, after hearing the parties, allowed the application and restrained the petitioners from interfering in the possession of respondent. This order is challenged in this petition.

4. I have heard Shri A.A.Phad, learned counsel for the petitioners and Shri T.M.Venjane, learned counsel for respondent sole.

5. Learned counsel for the petitioners submits that the transaction is a money lending transaction. He submits that documentary evidence is in favour of the petitioners. The names of the tenants were recorded in the revenue record, which were to be deleted. For that, permission was required to be taken. He submits that the said entry is not yet removed. Permission is also not taken. Though there is recital in the sale deed that possession is delivered, the original record shows that the possession is of the petitioners. He submits that he has produced receipts showing the land revenue paid by the petitioners.

6. The learned trial Court, as indicated above, rejected the

application for temporary injunction holding that there is no Judgment of the competent Tenancy Court to the effect that these persons do not have any tenancy interest over the suit land. No tenanted land, without permission of the competent authority, could be transferred or its possession could be delivered.

7. Learned Appellate Court allowed the appeal holding that there is recital in the sale deed of delivery of possession.

8. The respondent and the petitioners are *ad idem* that there is only entry of tenancy in the revenue record. The tenants have vacated the land. The tenants have not complained that they have been illegally dispossessed. It could have been of significance if the tenants had complained that they were dispossessed without due process of law. The dispute is between the owner (respondent - plaintiff) and the petitioners - defendants. There is recital in the sale deed about delivery of the possession. The petitioners have not raised the defence of money lending transaction in the written statement in the trial Court. Therefore, this defence is not available to them at this stage. In view of this, learned Appellate Court did not commit any error in granting injunction. Petition is, therefore, devoid of any substance. Hence, it is dismissed.

9. Rule is discharged.

10. On the request of learned counsel for the petitioners, trial of the suit is expedited.

(M.G.SEWLIKAR)
JUDGE

SPT