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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8729 OF 2021**

Shri Savata Maharaj Mandir
Trust Phaltan and Anr.

.... Petitioners.

V/s

Shri Vijaykumar Bankelal Agrawal

..... Respondent

Mr. Vishwanath S. Talkute for the Petitioners.

Mr. Girish R. Agrawal for the Respondent.

CORAM: NITIN W. SAMBRE, J.

DATE: JULY 20, 2022

P.C.:-

1] Heard.

2] In Regular Civil Suit No.515 of 2019 initiated by the Respondent/Plaintiff, below Exhibit-5 order of injunction came to be passed on 12/8/2021, thereby granting temporary injunction against the Petitioners, restraining them from interfering with possession of Respondent/Plaintiff. Petitioners/Defendants feeling aggrieved, preferred MCA No.94 of 2021 which is dismissed by the judgment and order dated 9/11/2021 passed by District Judge, Satara. As such, this Petition.

3] Contentions of Counsel for the Petitioners are, in view of law laid down by this Court in the matter of *Ratiram Pundlik Khedkar vs.*

Pundlik Arjun Khedkar reported in **AIR 1982 Bom 79** suit for injunction is not sustainable once the Respondent has lost possession over the suit property. According to him, in such an eventuality, Courts below have committed an illegality in granting temporary injunction in favour of the Respondent. So as to substantiate the said claim, Counsel for the Petitioners would invite attention of this Court to the factual matrix pleaded wherein it is claimed that Petitioners received possession from one Ashok @ Achalaram Jetharamji Chaudhary to whom Respondent sublet the premises. He would claim that already third party interests are created in relation to suit property by inducting tenant by the Petitioners-Trust and that being so orders impugned are liable to be quashed and set aside.

4] Mr. Agrawal, learned Counsel for the Respondent would support the orders impugned, as according to him Plaintiff was in a settled possession of the suit property by virtue of tenancy agreement for 33 years, entered on 1/4/1999. He would urge that third party from whom Petitioners are claiming to have received possession, though was called upon to enter witness box, has failed to. That being so, Courts below were justified in granting temporary injunction.

5] I have appreciated the said submissions.

6] Fact that vide Resolution passed by the Petitioners-Trust, 33 years of tenancy agreement was entered into way back on 1/4/1999 can be inferred. Once the aforesaid document is not disputed, it is for

the Petitioners to establish that Petitioners have received lawful possession of the aforesaid property by establishing that Respondent has surrendered tenancy.

7] Incidents which led to Petitioner drawing support for having received possession from the Respondent as regards opening of the lock, removing of belongings and receiving possession in 1999 were not at all established by oral or documentary evidence. It is claimed that on 17/10/2019 notice of termination of tenancy was issued to the Respondent. However, it is not established as to how the Petitioners have received possession without there being surrender of tenancy.

8] In the aforesaid backdrop, having regard to the availability sufficient documentary evidence on record which speaks of settled possession of the Respondent over the suit property, in my opinion, both the Courts below were justified in granting temporary injunction.

9] As regards claim put-forth by the Petitioners that third party interest in the suit property is already created, such act, if any, is always at risk and peril of the Petitioners, as prima facie it is inferred that tenancy was never surrendered by the Respondent to the Petitioners. As regards support drawn from the judgment of this Court in the matter of *Ratiram Pundlik Khedkar* cited supra, is concerned, it appears that in the said matter proceedings under Section 145 of Cr. P.C. were taken out so as to find out as to on the date when application for injunction was filed which of the parties

were in settled possession. As far as case in hand is concerned, suit claim of the Respondent is based on undisputed document i.e. agreement of tenancy entered on 1/4/1999. In that view of the matter, it cannot be said that Respondent should be relegated to remedy of filing suit for possession.

10] Against the concurrent findings, I hardly see any cause which warrants interference in extraordinary jurisdiction. Petition as such fails and same stands dismissed.

(NITIN W. SAMBRE, J.)