

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 1264 OF 2020

Anaji s/o Kawadu Hulke and ors.

..VS..

Mrs. Vimalbai wd/o Bija Wat

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri G.M. Kubade, Advocate for the petitioners.

CORAM : ROHIT B. DEO, J.

DATED : 29/03/2022.

None appeared on behalf of the respondent.

2. Heard the learned Counsel for the petitioners.

3. The petitioners are the defendants in Regular Civil Suit 30 of 2018, which is brought by the respondent-plaintiff, seeking permanent injunction, on the premise that the defendants are interfering with her possession over the suit property, which is an agricultural field ad-measuring 2.53 HR assigned Survey 33.

4. The plaintiff and defendant 1 are the daughter and son respectively, of Kawadu Hulke, while defendants 2 to 4 are the sons of the defendant 1.

5. Few facts are broadly admitted. The case of the plaintiff is that she was an encroacher *qua* the suit land, which is owned by the Government. The Tahsildar, Charmoshi imposed penalty and regularized the encroachment vide order dated 14.01.2002 and the plaintiff was allotted the lease/Patta of the suit field. The plaintiff dug

a well and is in cultivating possession, is her case. She claims that the defendants have attempted to dispossess her and on such premise, she is claiming the injunctive relief. The defendants, while not disputing the factum of the Patta in the name of the plaintiff, have assailed the legality of such grant. The defendants claim that after the death of the plaintiff's husband, she started residing at Village Illur. According to the defendants, they have encroached on the suit property and are in exclusive possession thereof.

6. Learned Trial Judge refused injunctive relief and in appeal preferred by the plaintiff, the Appellate Court has allowed the application for grant of temporary injunction.

7. I have scrutinized the reasons recorded by the Courts below, in support of the respective findings, and I have no hesitation in holding that the Appellate Court is right in injunctioning the defendants.

8. The learned Trial Court was influenced by the fact that the 7/12 extracts of the suit field from 1982-83 to onward, shows, the father of the plaintiff and the defendant 1, Kawadu Hulke, as in possession. While the learned Trial Court has attempted to pick holes in the version of the plaintiff, no attempt appears to have been made to ascertain the legal right and the basis thereof, of the defendants.

9. Insofar as, the material suggesting that Kawadu Hulke was in cultivating possession, the Appellate Court rightly noticed that as father of both the plaintiff and defendant 1, Kawadu shall be deemed to be in possession for and on behalf of the plaintiff. Learned Trial Judge further noted that there is a mechanism for challenging the Patta,

and as of date, the grant of Patta, is not set aside. The learned Appellate Judge then noticed several circumstances suggesting the possession of the plaintiff. The circumstances are, *inter alia*, the measurement of the suit field through the T.I.L.R., the mutation entry 189 dated 14.06.2013, the recent 7/12 extracts and letter dated 26.12.2017, issued by the office of the Sub-Divisional Officer (irrigation). The learned Appellate Court noted that the encroachment register, which is pressed in service by the defendants, is suspect since there is an obvious overwriting and alteration.

10. Reasonable view is taken and it cannot be said that the exercise of discretion by the learned Appellate Court, is flawed. In writ jurisdiction, it would neither be appropriate nor permissible for this Court to interfere with exercise of discretion, particularly, since the discretion is not demonstrably arbitrary.

11. I see no reason to interfere in writ jurisdiction. The petition is dismissed.

JUDGE

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