

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

APPEAL AGAINST ORDER NO. 62 OF 2018

- APPELLANTS :** 1. Natthu S/o Baliram Nichat,
(Ori. Defendants) Aged about 69 yrs., Occ. Cultivator,
 R/o. Ward No.5, Baripura, Ashti
 (Shahid), Post & Tah. Ashti (Shahid)
 Dist. Wardha.
2. Shamrao S/o Baliram Nichat,
 Aged about 65 yrs, Occ. Cultivator,
 R/o. Ashti, Tah. Ashti,
 Dist. Wardha.
3. Bahinabai S/o Ramdas Sambhe,
 Aged about 60 yrs, Occ. Cultivator,
 R/o. Jalgaon (Belora), Tah. Ashti,
 Dist. Wardha.

// VERSUS //

RESPONDENT : Rajendra S/o Tukaram Madankar,
(Ori. Plaintiff) Aged about 56 yrs, Occ. Cultivator,
 R/o. Ward No.5, Talegaon, Ashti Road,
 Baripura, Ashti (Shahid), Post & Tah.
 Ashti, Dist. Wardha.

Mr. S. D. Chopde, Advocate for appellants.
Mr. Shrey Dambhare, Advocate h/f Mr. V. T. Deshpande,
Advocate for respondent – sole.

CORAM: V. G. BISHT, J.

JUDGMENT RESERVED ON : **05/04/2022.**
JUDGMENT PRONOUNCED ON : **22 /04/2022.**

JUDGMENT :

Heard.

2. The appellants/original defendants have preferred

present appeal against the order dated 16.01.2018 passed below Exh. - 5 in Regular Civil Appeal No. 24/2017 by the learned Additional Sessions Judge, Wardha, thereby allowing the application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure (for short 'the Code') and thereby injecting the respondents/defendants, their agents or representatives restrained from disturbing the possession of the respondent/plaintiff over the suit land until decision of the appeal.

3. The respondent/plaintiff herein has filed suit for specific performance of the contract against the appellants/defendants along with prayer for perpetual injunction. It is the case of the respondent/plaintiff that appellant/defendant No. 1 had agreed to sell the suit land for consideration of Rs. 1,72,500/- and accordingly, he paid earnest money of Rs. 45,000/- to him. Accordingly, an earnest note has been executed by the defendant No. 1 in favour of respondent/plaintiff on 10.06.2004 by putting the respondent/plaintiff in possession of the suit land.

4. The respondent/plaintiff alleged that the appellant/defendant No. 1 tried to take the possession of the suit land in or

about the month of October 2009 and therefore, the plaintiff issued notice to defendant to execute sale-deed, however, the defendant failed to execute the same and therefore, suit for specific performance of contract and perpetual injunction came to be filed.

5. The appellant/defendant No. 1 resisted the claim by taking defence that blank stamp paper was supplied by him to one Credit Co-operative Society of which the plaintiff is a office-bearer. He alleged that the respondent/plaintiff forged the earnest note by using the said stamp paper and obtained false documents from revenue department by using political pressure. He therefore, prayed for dismissal of the suit.

6. The learned Trial Court after considering the evidence led by the parties, dismissed the suit vide judgment and order dated 25.01.2017. Being aggrieved by the impugned judgment and decree, the respondent/plaintiff filed the first appeal bearing R.C.A. No. 24/2017. In the said appeal, the respondent/plaintiff also filed an application for grant of interim relief by way of temporary injunction in order to protect his possession and the learned Appellate Court i.e. Additional

Sessions Judge, Wardha after hearing both the parties, allowed the application vide order dated 16.01.2018. It is this order which is impugned in the present appeal.

7. Mr. S. D. Chopde, learned Advocate for appellants/ original defendants, submits that it has been very specific defence of the defendants before the Trial Court that earnest note was forged by the respondent/plaintiff and by using political pressure and he also obtained forged revenue documents. Learned counsel took me through the various paragraphs of the judgment of the Trial Court in order to substantiate and support the impugned judgment and order which is subject matter of the appeal before the learned Additional Sessions Judge, Wardha. Learned counsel also took me through the impugned order passed in the appeal and more particularly paragraph 5 and submitted that the observations of the learned Appellate Court are contrary to the evidence discussed by the learned Trial Judge. According to learned counsel, impugned order deserves to be set aside and application at Exh. 5 needs to be rejected.

8. Mr. Shrey Damhare, Advocate h/f Mr. V. T. Deshpande, learned Advocate for respondent/plaintiff on the

other hand has filed written submission. I have gone through the written submission so filed on record.

9. I have also carefully gone through the impugned order of the learned Additional Session Judge, Wardha. At paragraph 5, the learned Additional Sessions Judge, Wardha has referred paragraph 16 of the judgment of the Trial Court and noted the observation of the Trial Court wherein the Trial Court found that respondent/plaintiff is in possession of the suit property on the basis of the several revenue records like mutation entry, village form No. 7 and other documents.

10. I have also carefully gone through paragraph No. 16 of the judgment and order of the learned Civil Judge, Junior Division, Ashti wherein the learned Trial Judge has clearly observed that the the certified copies of the orders (Exh. 49), copy of mutation entry (Exh. 50), Village Form No. 7B (Exh. 51) and certified copies of orders at Exh. 160 to 162 show that the plaintiff is in possession of suit land by virtue of contract for cultivation (makta). The Trial Court further found the factum of possession from the certified copy of deposition of Tahsildar At Exh. 165. It also observed that though the defendants i.e. appellants herein

claims to be in possession of suit land but the entire revenue record in that respect is against them and therefore, the learned Trial Court returned the finding in affirmative to issue No. 3 which was to the effect whether the plaintiff proves that he is in possession of the suit land.

11. In view of above, in my considered opinion, I do not find any illegality in the order of the learned Additional Sessions Judge, Wardha, inasmuch as the finding of possession is clearly given by none other than the Trial Court on the basis of revenue documents. Rather, on the other hand, the learned Trial Court found that though the defendant claimed possession but could not prove the same.

12. As far as the forging of earnest note and other documents are concerned that is something which is matter of appreciation of evidence, both oral and documentary evidence and that can be done only at the time of final hearing of the appeal with which the learned Additional Sessions Judge, Wardha is seized of. Prima facie, the respondent/plaintiff has been able to prove all the necessary ingredients, namely, prima facie case, balance of convenience and irreparable loss which are rightly so

noted by the learned Additional Sessions Judge, Wardha. No interference is therefore, called for at the hands of this Court.

13. In view of above, I do not find any merit in the appeal and accordingly appeal is dismissed. No order as to costs.

(V. G. BISHT, J.)

Gohane.

JITENDRA
BHARAT
GOHANE

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signed by
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