

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

WRIT PETITION NO. 3188 OF 2019

Pushpabai Chandrabhan Chaudhary and ors.

..VS..

Prakash Laxman Pilleye (Mannewar) and ors.

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

Court's or Judge's orders

Shri N.B. Bargat, Advocate for the petitioners.

Smt. Rashi Deshpande, Advocate for the respondents.

CORAM : MANISH PITALE, J.

DATED : 25/03/2022.

By this writ petition, the petitioners i.e. original plaintiffs have challenged order dated 1.04.2019 passed by the District Court, Nagpur, whereby an appeal filed by the respondents herein i.e. original defendants, was allowed and while dismissing the application for temporary injunction filed by the petitioner, a further direction was given to the petitioners restraining them from disturbing the peaceful possession of the respondents.

2. In the present case, the petitioners have filed a suit for declaration and permanent injunction against the respondents in respect of suit plots, claiming that they are lawful owners of the suit plots. It is also claimed that they are not only owners but also in possession of the suit plots. In the said suit, an application was moved for temporary injunction claiming that during the pendency of the suit, the respondents ought to be restrained from disturbing the peaceful possession of the petitioners in the suit properties and they further be restrained from creating third party rights in the suit properties.

3. By order dated 24.07.2018, the Court of 5th Joint Civil Judge, Junior Division, Nagpur i.e. the Trial Court, allowed the application and accordingly, restrained the respondents by way of temporary injunction from disturbing the peaceful possession of the petitioners in the suit properties and further, restrained them from creating third party interests in the suit properties, till the disposal of the suit.

4. Aggrieved by the same, the respondents had filed appeal before the District Court. As noted above, the District Court not only allowed the appeal and set aside the order, granting the application for temporary injunction, but went a step further and issued a direction to the petitioners not to disturb the peaceful possession of the respondents in the suit properties till the decision of the suit.

5. Mr. Bargat, learned Counsel appearing for the petitioners submitted that at the outset, second limb of the directions given in the impugned order was wholly uncalled for, particularly, in the backdrop that the respondents have never sought any such restraintment by filing an application or even otherwise before the Trial Court. The District Court was concerned only with the order passed by the Trial Court on Exhibit 5 i.e. application for temporary injunction, wherein the petitioners had made the aforesaid twin prayers. It was submitted that the Appellate Court committed a grave error in interfering with the well reasoned order of the Trial Court, even on the question of possession of the suit properties. It was submitted that when the Trial Court had rendered *prima facie* findings regarding fraudulent nature of documents relied by the respondents to claim possession in the suit

properties, the Appellate Court ought not to have interfered with such findings for reversing the order granting the application of temporary injunction. Learned Counsel for the petitioners pointed out that the documents on record indicated the extent to which the respondents had gone in relying upon documents that could be said to be fraudulent on the face of it. On this basis, it was submitted that the impugned order deserved to be set aside and the order of the Trial Court deserved to be restored.

6. On the other hand, Ms. Rashi Deshpande, learned Counsel appearing for the respondents submitted that the Appellate Court in paragraph 11 of the impugned order had referred to a plethora of documents placed on the record on behalf of the respondents, to demonstrate their possession in the suit properties. It was submitted that the reasoning given by the Appellate Court did not deserve any interference and it was on the basis of such findings that the Appellate Court thought it fit to give the further direction of restraining the petitioners from disturbing the peaceful possession of the respondents in the suit properties. It was submitted that the subsequent direction was given by the Court by exercising inherent powers. On this basis, it was submitted that the Writ Petition deserved to be dismissed.

7. This Court has considered the contentions raised on behalf of the rival parties, in the backdrop of the documents placed on the record, including photographs, upon which the parties have relied to prove their respective claims of possession in the suit properties.

8. A perusal of the documents placed on the record shows that apart from the alleged agreements to sale, the respondents have also relied on documents issued by public authorities, concerning electricity bills and such other documents. The Appellate Court in paragraph 11 of the impugned order has referred to the said documents and on analyzing the same, has found that the respondents are in possession of the suit properties. Reference is also made to photographs placed on the record and thereafter, *prima facie* findings regarding possession have been rendered in favour of the respondents. There is conflict of opinion in the two Courts below on the question of respondents' claim regarding the possession of the suit properties, but this Court is refraining from interfering with the findings rendered by the Appellate Court in writ jurisdiction as there appears to be detailed discussion regarding documents placed on the record, particularly, those issued by public authorities and on the basis of the claim of the respondents that the plot numbers were renumbered, which has led to certain confusion in the mind of the petitioners. Without commenting further on the said aspect of the matter, this Court is of the opinion that in writ jurisdiction, no case is made out by the petitioners to interfere with the findings of the Appellate Court as regards the possession in the suit properties. Suffice it to say, that when the petitioners have come forward with the positive case that they are in the possession of the suit properties and they deserve an order of temporary injunction, restraining the respondents from disturbing their peaceful possession, the material on the record, *prima facie*, does not conclusively prove the positive assertion made on behalf of the petitioners.

9. But, this Court is of the opinion that when the

respondents have claimed possession in the suit properties on the basis of alleged agreements to sale and documents issued by public authority like Electricity Bills, etc., they certainly cannot be permitted to create third party rights in the suit properties, which would unnecessarily complicate the dispute between the parties. To that extent, the Appellate Court certainly committed an error in setting aside the order passed by the Trial Court in totality. The direction given by the Trial Court restraining the respondents from creating third party rights in the suit properties during the pendency of the suit, was clearly justified in the facts and circumstances of the case, even if, the claim of possession of the petitioners in the suit properties, was found unworthy of acceptance while deciding the application for temporary injunction.

10. It is found that the subsequent positive direction given by the Appellate Court, was wholly uncalled for, particularly in the light of specific prayers made in the application for temporary injunction, filed on behalf of the petitioners. This Court is of the opinion that when the finding of the Appellate Court regarding possession of the suit properties is being accepted by this Court, any apprehension on the part of the respondents regarding their possession being disturbed, would have to be made out before the Trial Court, if at all any such situation arises. As of now, it is found that there was no reason for the Appellate Court to have issued subsequent direction in the impugned order.

11. In view of the above, the appeal is partly allowed. The impugned order to the extent that it reversed the order of the Trial Court in totality is found to be unsustainable. Accordingly, the impugned order passed by the

Appellate Court is partly set aside. The direction given by the Trial Court restraining the respondents from creating third party rights in the suit properties during the pendency of the suit is restored and accordingly, the respondents stand restrained from creating third party rights in the suit properties during the pendency of the suit. Equally, the subsequent direction given by the Appellate Court, restraining the petitioners from disturbing possession of the respondents, is set aside, as it is found that there was no substratum or reason to issue such a direction, particularly, in the absence of any application or prayer made on behalf of the respondents in that regard.

12. The Writ Petition stands disposed of.

13. The Trial Court will make an endeavour to dispose of the suit, as expeditiously as possible.

JUDGE

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