

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

WRIT PETITION NO. 3424 OF 2022

Ramkisan s/o Chaturlal Jaiswal

vs.

Arjunlal s/o Ratanlal Jaiswal

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. Amol Deshpande, Advocate for petitioner.
Mr. A. P. Tathod, Advocate for sole respondent.

CORAM : MANISH PITALE J.

DATE : 13/09/2022

By this petition, the petitioner has challenged order dated 25/05/2022, passed by the Court of Joint Civil Judge Junior Division, Karanja Lad, District – Washim, whereby an application filed at Exh.57 for vacating the order of temporary injunction, has been dismissed.

2. In the present case, the respondent has filed a suit for permanent injunction seeking an order of restraint against the petitioner from disturbing peaceful possession of the suit land. The respondent has claimed that his father was cultivating the suit

land for many years and thereafter, the respondent as a legal heir is cultivating the same. In the said suit an application for temporary injunction was filed, which was opposed by the petitioner.

3. By order dated 21/03/2017, the trial Court passed an order allowing the application for grant of temporary injunction at Exh.5, thereby temporarily restraining the petitioner from disturbing the peaceful possession and cultivation of the respondent in the suit land during the pendency of the suit. It is an admitted position that the said order was challenged by way of an appeal, which was dismissed and thereafter a writ petition was filed before this Court. The petitioner chose to withdraw the writ petition with liberty to move proper application under Order 39 Rule 4 of the Civil Procedure Code (CPC), before the Court below, in view of change of circumstances, in order to seek vacation of the order of temporary injunction. Thereupon, the petitioner filed the aforesaid application for vacating the order of temporary injunction, solely on the basis that in the interregnum the Sub-Divisional Officer had passed an order in favour of the petitioner, setting aside the order of the Tahsildar and holding that there was no tenancy between the petitioner and the respondent. It is

claimed that since the order of Tahsildar was set aside and according to the order of the Sub-Divisional Officer, the respondent was not a tenant and did not have any right to claim possession and cultivation in the suit property, the order of temporary injunction deserved to be vacated.

4. Mr. Deshpande, learned counsel appearing for the petitioner submits that the Court below erred in dismissing the aforesaid application, despite the admitted position that the order of the Sub-Divisional Officer had reversed the findings of the Tahsildar and specific findings were rendered in favour of the petitioner.

5. As opposed to this, Mr. Tathod, learned counsel appearing for the sole respondent submitted that even if the order of the Sub-Divisional Officer was to be taken into consideration, the findings rendered by the Court below and the appellate Court on the factum of the respondent being in actual physical possession of the suit land, could not be said to have been disturbed. It is further informed that the order of the Sub-Divisional Officer is now the subject matter of challenge before the Maharashtra Revenue Tribunal.

6. This Court has perused the material on record and the admitted facts that come to the fore are that the trial Court and the appellate Court concurrently found the respondent to be in actual physical possession of the suit land, while granting and confirming the order of temporary injunction in his favour. There can be no doubt about the fact that the order of the Sub-Divisional Officer indicates that the claim of the respondent of being a tenant in the suit land has been negated and the order of the Tahsildar has been set aside, but it is an admitted position that the challenge raised against order of the Sub-Divisional Officer is now pending before the Maharashtra Revenue Tribunal.

7. This Court is of the opinion that even if the order of the Sub-Divisional Officer is to be taken into consideration, it cannot have the effect of wiping out the findings rendered by the trial Court, while allowing the application for temporary injunction at Exh.5 and the findings rendered by the appellate Court while confirming the order of temporary injunction. Both the Courts below on the basis of material available on record found that *prima facie* the respondent was in actual physical possession and cultivating the suit land. It cannot be said that merely because subsequently the Sub-Divisional

Officer passed the said order holding that the respondent could not demonstrate that he was a tenant in the suit land, the findings so rendered in favour of the respondent concurrently by the two Courts, could be said to have been disturbed.

8. No case was made out for invoking power under Order 39 Rule 4 of the CPC and the Court below correctly dismissed the application at Exh.57 filed on behalf of the petitioner.

9. In view of the above, the Writ Petition is dismissed.

10. The suit filed by the respondent bearing Regular Civil Suit No.45 of 2016, has been pending for about six years. Therefore, it would be appropriate that the Court below expedites the proceedings in the pending suit.

JUDGE