

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

Writ Petition No. 7411 of 2018

Rajendra Mahadevrao Sune
Aged 58 years, Occu : Agriculturist,
R/o Ward No. 12, Baripura,
Nandgaon Khandeshwar,
Tq. :- Nandgaon Khandeshwar,
Distt. Amravati.

.... Petitioner

.. Versus ..

(1) Nilesh Bhaskar Darokar,
Aged 31 years, Occu : Agriculturist,
R/o Ward No. 12, Baripura,
Nandgaon Khandeshwar,
Tq. : Nandgaon Khandeshwar,
Distt. Amravati.

(2) Ramesh Madhukarrao Ambadkar,
Aged 53 years, Occu : Agriculturist and
Service, r/o Baripur, Juni Basti, Badnera,
Tq. and Dist. Amravati.

.... Respondents

Mr. S. J. Kadu, Advocate for the petitioner
Mr. N. A. Gawande, Advocate for respondent 1
None for respondent 2

CORAM : ROHIT B. DEO, J.
DATED : 07-01-2022

ORAL ORDER

Rule. Rule made returnable forthwith.

2. With consent, the petition is finally heard at the admission stage.

3. The plaintiff in Regular Civil Suit 22 of 2014, instituted for specific performance of agreement dated 07-04-2004 allegedly executed by one Rukhmabai Sune, is aggrieved by the concurrent orders rendered by the trial Court and then by the appellate authority, holding the plaintiff disentitled to injunction, restraining the defendants from disturbing the possession *qua* the agricultural field in question.

4. I am not inclined to entertain the petition for reasons which are briefly spelt out hereinafter.

The claim for specific performance is on the basis of an agreement allegedly executed by Rukhmabai Sune on 07-04-2004. The suit is filed in the year 2014 and the application for temporary injunction is preferred in 2017. I am called upon to decide the validity of the refusal of injunction in the year 2022. The suit is ripe for hearing, and I am informed that the evidence is to be recorded on 13-01-2022. In this view of the matter, it would be appropriate, if a direction is issued to the learned trial Court to decide the suit expeditiously.

5. Even *dehors* the aspect which is referred to supra, the plaintiff would be entitled to injunctive relief only, if a case is made out for protecting the possession by virtue of the provision of Section 53A of the Transfer of Property Act. This would be an aspect to be looked into

by the trial Court on the basis of evidence and at this stage, it would not be possible for me to render any positive finding on whether the plaintiff had performed his part of the contract in entirety. I leave this question open for the trial Court to consider.

6. I note from the reasons recorded, that apart from the affidavits of the neighbours, there is no revenue record as such, to come to a *prima facie* finding, at this stage, that the alleged possession of the plaintiff is recognized or acknowledged in any revenue record.

7. In the totality of the circumstances, I see no reason to interfere with the discretion concurrently exercised in favour of the defendants, in writ jurisdiction.

8. The learned trial Judge is requested to decide the suit as expeditiously as possible, and in any event, within the next nine months.

9. The petition is disposed of.

JUDGE

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