

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

WRIT PETITION NO. 7359 OF 2019

Sudam s/o Nivrutti Hade

-- Petitioner

Vs.

Ruprao s/o Atmaram Hade and others

-- Respondents

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

Court's or Judge's orders

Mr. Vishnu B. Gawali, Advocate for Petitioner

Mr. G.N. Shinde, Advocate with Mr. S.I. Ghatte, Advocate for
Respondent No.2

CORAM : MANISH PITALE, J.

DATE : 12th SEPTEMBER, 2022

Heard learned counsel for the petitioner.

2. By this petition, the petitioner i.e. original plaintiff has challenged concurrent orders passed by the two Courts below rejecting application at Exh.5 for grant of temporary injunction in the pending suit.

3. The petitioner has filed a suit for grant of permanent injunction against the respondents herein. In the said suit, an application for permanent injunction was filed seeking protection of possession of suit property allegedly located in Gat No.452. The petitioner stated in the plaint that he was in possession of the suit property.

4. The application for grant of temporary injunction was resisted by the respondent No.1 on the basis that he was in possession of the suit property.

5. The thrust of the submissions made before this Court on behalf of the petitioner are that in another suit filed by the respondent No.1, being a suit for possession and mesne profit, pertaining to Gat No.320, it was conceded that the petitioner herein was in possession of the suit property in Gat No.452. It was further submitted that the map on the basis of which the aforesaid suit was filed by respondent No.1 pertaining to Gat No.320, was subsequently set aside, in the sense that the measurement on the basis of which the map was prepared was itself set aside by the competent authority. On this basis, it was submitted that the Court below had erred in rejecting the application for temporary injunction.

6. On the other hand, it was submitted on behalf of the respondent No.1 that other than reference to the map in question, the measurement of which was set aside by the competent authority and reference to the contents of the plaint in the suit filed by respondent No.1, the Trial Court in the present case had specifically referred to affidavits filed by at least three persons stating that the respondent No.1 was indeed in possession of the suit property concerning the suit from the present writ petition arises. It is submitted that there was no material placed on record on behalf of the petitioner to even prima facie show his possession in the suit property. All the emphasis was placed on the contents of the

plaint in the suit filed by respondent No.1 and the order setting aside the measurement on the basis of which the aforesaid map was prepared. On this basis, it was submitted that the present writ petition did not deserve to be favourably considered.

7. A perusal of the impugned orders passed by the two Courts below would show that the application for temporary injunction has been rejected on the basis that the petitioner failed to even prima facie show his possession in the suit property. Apart from this, there is indeed reference to the suit filed by respondent No.1. The Courts below have emphasized on the fact the suit filed by respondent No.1 is before the Court at Risod, while the suit filed by the petitioner is before the Court at Mehkar. It is then stated by the two Courts below that the petitioner could very well have filed a counter claim. There is no reference to the order setting side measurement on the basis of which map was prepared, obviously because the said order was passed after the impugned orders were passed by the two Courts below.

8. Insofar as the question of jurisdiction of the Courts and pendency of suit filed by the respondent No.1 is concerned, it is brought to the notice of this Court that subsequently the respondent No.1 has withdrawn the aforesaid suit with liberty to file fresh suit. It is also an admitted position that subsequent to the impugned orders passed by the two Courts below, the aforesaid order was passed by the Deputy Superintendent of Land Records at Risod, cancelling the

measurement on the basis of which map was prepared, which was relied upon by the respondent No.1 in the suit filed by him, which has been subsequently withdrawn. At first blush, the contentions raised on behalf of the petitioner in respect of the two above aspects of the matter appear to be attractive, but, when the basic requirements of seeking temporary injunction are analyzed on the touch-stone of strong prima facie case, it is found that there is hardly any material brought before the Courts by the petitioner to even prima facie show his possession in the suit property. Other than the statements made in the plaint, the petitioner has heavily relied upon certain statements made in the suit filed by the respondent No.1, which was eventually withdrawn. Emphasis is also placed on the cancellation of the measurement as it was the basis of the map upon which the respondent No.1 had relied while filing the said suit before the Court at Risod, which was been subsequently withdrawn.

9. This Court is of the opinion that the Courts below were justified in considering whether at least prima facie case was made out by the petitioner to show his possession in the suit property. It is found that other than making statement in the plaint that he continued in possession of the suit property, there was no other material placed on record to positively support the said claim. On the other hand, the respondent No.1 had placed on record affidavits of at least three persons stating that respondent No.1 was in possession of the suit property and this was a factor taken into account by the

Courts below while rejecting the application for temporary injunction. Since the petitioner failed to even prima facie place on record any positive material to support his claim of being in possession of the suit property, considering the affidavits of three persons in favour of respondent No.1, it cannot be said that the Courts below committed any error in holding against the petitioner while deciding the application for grant of temporary injunction at Exh.5.

10. In view of the above, it is found that the present writ petition is without any merit. Accordingly, the writ petition is dismissed.

11. In the interest of justice, the proceedings before the Trial Court in the suit filed by the petitioner are expedited.

12. Needless to say, the observations made by the Trial Court and Appellate Court in the impugned orders and those made by this Court in the present order are limited to deciding the question of the entitlement of the petitioner for grant of temporary injunction and such observations will not influence the Trial Court while deciding the suit on merits.

JUDGE