

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

WRIT PETITION NO. 96/2020

Gopal s/o Narayan Kuthe and Ors. .vs. Dadaji s/o Govinda Mundle and anr.

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

Court's or Judge's orders

Mr. A. S. Bhendarkar, Advocate for petitioners.
Mr. M. N. Ali, Advocate for respondent nos. 1 and 2.

CORAM : AVINASH G. GHAROTE, J.
DATE : 27.07.2022

Heard Mr. Bhendarkar, learned counsel for the petitioner and Mr. Ali for the respondent nos.1 and 2.

2. The Petition challenges the concurrent findings by the court below holding that the respondents are in cultivating possession and therefore the application for injunction filed by the respondents/original plaintiffs has been allowed by the trial court by the order dated 20.12.2020 and has also been confirmed by the appellate Court by its judgment dated dated 27.04.2019.

3. Mr. Bhendarkar, learned counsel for petitioner submits that the claim of the plaintiffs being in possession is on a basis of an oral agreement as spelt out of the year 1992 based upon which the plaintiff is placed in possession and therefore the basic premise of filing of the suit, was clearly unsustainable in law.

4. Whether the suit will succeed or not on the basis of a plea of an oral agreement is a matter for the trial court to decide based upon the evidence which may come on record. Insofar as the application for injunction is concerned, both the courts below have rendered a concurrent finding of the plaintiffs being in cultivating possession of the suit property. The basis of a such a finding is not only the order of the Sub Divisional Officer, Desaiganj, as a Magistrate under Section 145 of the Code of Criminal Procedure dated 19.10.2018, which has been subsequently stayed in revision (page 63) by the order dated 05.11.2018, but also the spot panchanama dated 23.10.2018 as well as the entry in the 7B extract, which indicates that since the last seven years prior to the suit, the respondent is in cultivating possession of the land in question.

5. That being the position, in my considered opinion, no fault can be found with the findings of the learned courts below. There is no merit in the petition. The same is accordingly dismissed. No order as to costs.

JUDGE

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