

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

Writ Petition No. 8409 of 2019

Dilip Ramesh Rao Choudhari
Age - 50 years, Occ. - Farming,
R/o. Deurwadi (Lad),
Tal. Darwaha, Dist. Yavatmal.

... Petitioner

... Versus ...

(1) Narayan Krushnarao Sawade,
Aged - 60 years, Occ. Farming ;

(2) Mayur Narayan Sawade,
Aged - 32 years, Occ. Farming ;

(3) Harshad Narayan Sawade,
Aged - 28 years, Occ. Farming ;
All R/o. Deurwadi (Lad),
Tal. Darwaha, Dist. Yavatmal.

... Respondents

Mr. D. U. Thakare, Advocate for the petitioner
Mr. S. M. Vaishnav, Advocate for respondents

CORAM : ROHIT B. DEO, J.

DATED : 21-2-2022

ORAL JUDGMENT

Rule. Rule made returnable forthwith. The petition is heard finally with consent of the learned counsel appearing for the parties.

2. The petitioner is the plaintiff in Regular Civil Suit 39/2017 which is instituted against the respondents herein seeking permanent and mandatory injunction. The plaintiff has described the suit property as plot admeasuring 16750 sq.ft., assigned property number 303 in the Gram Panchayat record. The plaintiff asserts that said property 303 is an ancestral property.

3. According to the plaintiff, the defendants are owners of property 286 and 287 and have undertaken construction by demolishing the existing structure, and in the process have attempted to encroach upon property 303.

4. The plaintiff preferred an application seeking temporary injunction qua the alleged disturbance in possession which the trial Court rejected reasoning that the plaintiff has not proved possession. The trial Court, *inter alia* noted that document Form 8 on which heavy reliance was placed by the plaintiff cannot be trusted since the Gram Panchayat has conveyed to the defendants that there is no record in the Gram Panchayat showing the measurement of Plot 303. Dissatisfied, the plaintiff preferred Miscellaneous Civil Appeal 24/2017 before the District Judge, Darwha and it is dismissed vide judgment dated 17-7-2019. The appellate Court has held that apart from Form 8, which

is in serious dispute, there is no convincing material to establish possession. The appellate Court has further noted the submission of the defendants that the plaintiff was the Sarpanch for considerable period and appears to have manipulated or fabricated certain documents. The appellate Court further noted that no steps have been taken to have the property measured.

5. It is not in dispute that the defendants are owners of Plots 286 and 287 and according to the appellate Court, the exact area of the land owned by them is mentioned in the sale deeds. Irrefutably, the plot in question is an open plot and it is not even the case of the plaintiff that the same is appurtenant or adjacent to his residence. Between the disputed plot and the residence of the plaintiff is a public road. In the absence of cogent material on record to establish, if not the title, at least settled possession as regards a particular portion, which is identifiable, the Courts below committed no error in rejecting the injunction application.

6. Learned counsel Mr. Thakare makes an attempt to rely on certain documents which were not on record when the adjudication impugned was done. I am not inclined to permit the petitioner to rely on additional material at this stage. However, if otherwise permissible,

it is always open to the petitioner to apply for injunction afresh or to seek modification and if such an application is made, the same shall be considered by the trial Court on its own merit. I do not see any reason to interfere in writ jurisdiction.

7. The petition is dismissed.

JUDGE

wasnik