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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6593 OF 2022

Vijay Premchand Kucheriya

PETITIONER

VERSUS

Bhimashankar Ganpatrao Kshirsagar

RESPONDENT

.....

Mrs. Vaishali A. Shinde, Advocate for the petitioner

Mr. Pravin N. Kalani, Advocate for the respondent

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 17th APRIL, 2023

ORDER :

1. The petitioner – original defendant in Regular Civil Suit No. 9 of 2019, is aggrieved by order passed by the 3rd Joint Civil Judge, Senior Division, Parbhani below Exhibit-5, thereby allowing the application filed by the plaintiff for temporary injunction. The said order is confirmed by the Principal District Judge, Parbhani vide order dated 28th January, 2022 passed in Miscellaneous Civil Appeal No. 27 of 2021.

2. The plaintiff – respondent has filed suit for perpetual injunction in respect of the suit property, which is a house property. The defendant appeared in the suit and resisted the same by filing written statement. The Trial Court, after hearing

the parties, allowed the application for temporary injunction. The appeal filed by the defendant challenging the said order is dismissed by the District Court. Hence, the present writ petition.

3. Heard learned advocate for the petitioner and the learned advocate for the respondent. Perused the writ petition memo and the citations relied on by both the parties and the impugned order.

4. Learned advocate for the petitioner vehemently submitted that by way of a registered sale deed No. 589 of 1958, the suit property was purchased by the predecessor of the defendant and there is recital in the sale deed that suit property was handed over to the predecessor of the defendant. Therefore, according to her, injunction cannot be granted against the original owner of the property. According to her, both the courts have erred in granting temporary injunction in favour of the plaintiff. In support of her submissions, she has placed reliance on "***Behram Tejani and Others V/s Azeem Jagani***" (2017) 2 SCC 759 and "***Padhiyar Prahladi Chenaji (Deceased) LRS V/s Maniben Jagmalbhai (Deceased) LRs and Others*** 2022 SCC OnLine SC 258.

5. The documents placed on record by the plaintiff *prima*

facie show that though name of Nemichand is recorded as owner of the suit property, name of Gangubai / mother of the plaintiff is recorded as possessor. The property assessment extracts, general tax receipts, water tax, property tax receipts all show that name of Premchand Nemichand as owner, but name of Gangubai is mentioned as possessor of the suit property. Even the electricity bill, placed on record by the plaintiff, shows that the electricity meter is in the name of Gangubai and last bill dated 29th December, 2018 was paid by the plaintiff.

6. The record *prima facie* indicates that the plaintiff is in possession of the suit property, therefore, the Trial Court has rightly held in favour of the plaintiff. The plaintiff has made out a *prima facie* case and the balance of convenience lies in his favour. Irreparable loss would be caused to the plaintiff, if his possession is not protected. The Trial Court has taken care of the interest of the defendant, by observing that the defendant is entitled to recover possession of the suit property by following due procedure of law.

7. In "***Behram Tejani and Others***" (*supra*), injunction was sought by the plaintiff – a gratuitous licensee for restraining co-owners of suit property from dispossessing plaintiff, the Apex Court held that the said suit was not maintainable. This decision

is rendered in different facts and, therefore, it is not applicable to the facts of the present case. In this citation, the principles of law laid down in **"Maria Margarida Sequiera Fernandes V/s Erasmo Jack de Sequiera"** (2012) 2 SCC 370 are enumerated as follows:

"Principles of law which emerge in this case are crystallised as under:

(1) No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long possession of years or decades such person would not acquire any right or interest in the said property.

(2) Caretaker, watchman or servant can never acquire interest in the property irrespective of his long possession. The caretaker or servant has to give possession forthwith on demand.

(3) The Courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for some time either as a friend, relative, caretaker or as a servant.

(4) The protection of the court can only be granted or extended to the person who has valid, subsisting rent agreement, lease agreement or licence agreement in his favour.

(5) The caretaker or agent holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself or in such property irrespective of his long stay or possession.

8. In **"Padhiyar Prahladji Chenaji"** (*supra*) the Apex Court has held that permanent injunction cannot be sought against true

owner. In that case, rights of the parties were already adjudicated and defendant No.1 was held to be the true owner of the suit property on the basis of a registered sale deed and on payment of full sale consideration. Therefore, it was held that due process of law had been followed and hence the plaintiff is not entitled for permanent injunction against the true owner.

9. In the case in hand, the rights of the parties are yet to be adjudicated and both the courts have *prima facie* held that the plaintiff is in possession of the suit property. In that view of the matter, the ratio laid down in the present ruling is also of not help to the case of the defendant.

10. Both the courts have recorded concurrent findings of fact, which are not liable to be interfered with in extraordinary writ jurisdiction. No case is made out by the petitioner to cause interference in the concurrent findings of fact. Writ petition being devoid of merit, is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE