

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

17 WRIT PETITION NO.441 OF 2023

**NARAYANSINGH BHAUSAINGH PAWAR AND OTHERS
VERSUS
PUNAMSINGH DAGADUSINGH CHUGNGADE**

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Advocate for Petitioners : Mr.Brahme Shailesh P.
Advocate for Respondent No. 1 : Mr.Jawre Vishnu M. and Mr.Kedar
Balbhim R.

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CORAM : SHARMILA U. DESHMUKH, J.

DATE : 22.02.2023.

PER COURT :

1. Heard.
2. By this petition the challenge is to the order dated 10.11.2022 passed by the appellate Court in Misc. Civil Appeal No. 31 of 2021 reversing the finding of the trial Court below Exh. 5.
3. The respondent/plaintiff instituted RCS No. 04 of 2020 seeking perpetual injunction in respect of Gut No. 34 to the extent of 74 R land. The plaintiff came with the case that the property in question was allotted to his father in the year 2004 as project affected person and since then his father was in possession of the suit property. The plaintiff's father expired on 08.05.2013 and the plaintiff being the legal representative continued in possession and

occupation of the suit property. It is further his case that he has cultivated the property and has cultivated the Sweet Lemon trees and is taking its yield. As the petitioners attempted to dispossess the plaintiff from the suit property, the respondent-plaintiff was constrained to institute a civil suit.

4. In the proceedings an application came to be filed below Exh. 5 seeking an order of temporary injunction. Before the trial Court the respondent produced 7/12 extract which reflects the entry of the name of respondent's father and also cultivation of the crop was recorded. In addition, he has also produced a copy of the panchanama dated 30.06.2015. As against this, the petitioner relied upon the unregistered lease deed executed for a period of 99 years, which, according to the petitioners was a composite deed dated 21.01.2009. In support of their claim for possession the petitioners also placed on record a copy of panchanama dated 31.08.2020.

5. The trial Court on considering the documents which were placed on record, found *prima-facie* case in favour of the petitioners by relying on the unregistered and unstamped lease deed and on the basis of the same held the petitioners to be in possession of the property.

6. Being aggrieved by the order passed by the trial Court dated 04.12.2020 the respondent preferred an appeal before the appellate Court. By the order dated 10.11.2022, the findings of the trial Court were reversed. The appellate Court observed that the suit property was restricted tenure, which was allotted to the father of the plaintiff in the year 2004, that the 7/12 extract of the suit property stood in the name of the plaintiff; which also reflected the presence of sweet lemon trees in the suit property. The panchanama dated 30.06.02015 prepared by the Circle Officer shows that the suit property in possession of the plaintiff and the order issued by the Tahsildar disclosed recommendation of conversion of the land from Class-II to Class-I. The appellate Court observed that the plaintiff had obtained the insurance of the Sweet Lemon trees. The appellate Court did not take into consideration unregistered and un stamped lease deed by holding that the same cannot be used in view of the provisions of Section 17 of the Registration Act as the lease deed is required to be registered mandatorily.

7. The learned counsel appearing for the petitioners submits that the unregistered and un-stamped lease deed can be looked upon for the purpose of considering the aspect of the possession at the interim stage. He would further submit that it is clear from the lease deed that the petitioners have been put in

possession of the property and as such the panchanama to that effect dated 31.08.2020 is also produced on record. He would further submit that the powers assigned to the appellate Court are restricted and is to be exercised only in case of perversity. In support of his contention he relied upon the decision of the Hon'ble Apex Court in the case of **Wandar Ltd. and Ors. Vs. Antox India P. Ltd.** MANU/SC/0595/1990 / 1990(Supp)SCC727.

8. Per contra, the learned counsel for the respondent submits that the material produced on record by the respondent was sufficient to *prima-facie* establish his case of possession, which was required to be taken into consideration at the interim stage. As far as the execution of the lease deed, the issue is matter of trial and for the purpose of temporary injunction the material has been taken into consideration.

9. Considered the rival submissions of the parties.

10. It is settled that for the purpose of grant of temporary injunction, it is the factum of possession which is relevant. At the interim stage for establishing the factum of possession, the material on record has to be considered. In the present case there is no dispute that the 7/12 extract is in favour of the respondent and also

the crop cultivation record which shows the existence of sweet lemon trees upon the property. On the other hand, reliance of the petitioner is on the unregistered lease deed to substantiate his claim for possession. Upon a query made by this Court, as regards the insurance which has been obtained by the respondent for the Sweet Lemon trees, the learned counsel for the petitioners fairly concedes that there are no averments in the reply filed before the trial Court as regards the said aspect.

11. Considering the documentary evidence which has been produced on record by the respondent in the form of 7/12 extract, crop cultivation, panchanama of the Circle Officer, it cannot be disputed that *prima-facie* the possession is made out by the plaintiff. As regards the panchanama dated 31.08.2020 relied upon by the Petitioner is concerned, un-disputed position is that the panchanama was not executed in presence of the respondent. The issue of unregistered and un stamped lease deed will be considered at the time of trial and as the Respondent has established a *prima facie* case of possession, there is no requirement of going into the issue of execution of lease deed without sanction as it was restricted tenure.

12. Suffice for our purpose that the documents on record makes out prima-facie case of possession of the respondent/plaintiffs

over the suit property. In my opinion, the trial Court erred in relying only on the lease deed to hold the aspect of possession in favour of the petitioners. The trial Court by ignoring relevant material placed on record by the respondent/plaintiff has rendered its findings perverse, which has been rightly reversed by the Appellate Court. As far as decision relied upon by the learned counsel for the petitioners is concerned, there is no quarrel with the possession as the appellate Court will not interfere with the exercise of discretion of the trial Court, however, it needs to be noted that in the event its findings are perverse, in as much as the relevant materials are not considered then in such event the appellate Court is justified in interfering with the perverse findings of the trial Court.

13. Considering the above, there is no infirmity in the order passed by the appellate Court dated 10.11.2022. Writ Petition is devoid of merits and stands dismissed.

**(SHARMILA U. DESHMUKH)
JUDGE**

mahajansb/