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

WRIT PETITION NO.3352 OF 2022

[Manik s/o Bansilal Pachade .vs. Adinath Swami Digambar Jain Sansthan]

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

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Shri Uday Deopujari, Advocate for the petitioner,
Shri M.R. Joharapurkar, Advocate for the respondent.

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CORAM : ANIL S. KILOR, J.
DATE : 12th JULY, 2023.

An unsuccessful defendant before both the courts below in the matter of grant of temporary injunction, has approached to this Court challenging the temporary injunction granted in favour of the plaintiff and against the petitioner/defendant.

2. Both the courts below *prima facie* have held that the plaintiff-Trust is in possession of the suit field. Whereas, while challenging the said findings, the learned counsel for the petitioner has placed reliance on a judgment and order dated 06.08.2009 passed by the learned Judicial Magistrate, First Class, Bhatkuli in Regular Criminal Case No.293/2008, wherein in para 10, it has been observed that PW-3 Satish admitted that the father of accused Manik used to cultivate the agricultural field of the Trust. It is further admitted that Manik was cultivating the agricultural field being legal heir till today. The learned counsel for the petitioner has further drawn attention of this court to para 15 to show that PW-3 Satish has admitted the possession of the

father of the petitioner. He has further relied upon the numerous receipts issued by the persons who carried out the agricultural operation to show that the petitioner is in possession of the suit land. He further submits that there are proceedings pending challenging the possession receipt issued by the Tahsildar.

3. On the other hand, Shri Joharapurkar, learned counsel for the plaintiff-trust points out that the Writ Petition No.2499/1999 filed by Sansthan against the petitioner, was allowed quashing the judgment passed by the Maharashtra Revenue Tribunal on 18.12.1996 and upholding the order of Sub-Divisional Officer directing the summary eviction of the petitioner under Section 120 of the Maharashtra Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958. It is pointed out that the said judgment was upheld by the Division Bench in Letters Patent Appeal and the Special Leave Petition filed against the same was withdrawn by the petitioner.

4. It is submitted that thereafter the Sub-Divisional Officer on 26.07.2002 directed the Tahsildar to hand over the possession of the land in question to the trust and in compliance with the same, the Tahsildar, by preparing a possession letter handed over the possession of the land in question on 1.8.2002 to the respondent-trust. The panchanama drawn at the time of handing over the possession shows that many villagers were present as a witness to the said fact. He therefore submits that there is ample evidence available on record to *prima facie* show that the respondent-trust is in possession of the suit property and not the petitioner. He therefore submits that both the courts

below while injecting the petitioner from interference with the possession of the trust, have held that the respondent-trust is in possession of the suit field. He therefore prays for dismissal of the present petition.

5. In the light of rival contentions of the parties, I have perused the record and the impugned judgments and orders. There is no dispute that the witnesses of the trust in criminal matter deposed that the petitioner is in possession of the suit land and on the date of incident the petitioner was cultivating the land. However, the learned lower appellate court has rightly held that the said finding is not binding on the civil court.

6. While weighing the documents filed by both the parties on record namely various receipts filed by the petitioner to show that he is in possession and on the other hand the judgment and order of this court upholding the order of the Sub-Divisional Officer directing the petitioner to hand over the possession and in pursuance of the same the possession receipt prepared by the Tahsildar along with panchanama drawn in the presence of the villagers, I am of the opinion that the weightage should be given to the documents prepared by the revenue authorities. Moreover, there is no dispute that the petitioner is a legal heir of original tenant and the respondent-trust possesses exemption certificate under Section 129-B of the Maharashtra Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958.

7. It is stated that the said certificate is under challenge at the instance of the petitioner. However, presently there is no

judicial pronouncement holding that the said certificate is invalid. Thus, till the said certificate is in force, the petitioner has no right as a legal heir to inherent the tenancy.

8. Thus, considering the above referred aspects and the findings recorded by both the courts below holding that the petitioner is not in possession of the suit field, I am of the opinion that no interference is required in this matter.

9. Accordingly, the writ petition is dismissed.

10. Needless to mention that the observations made in this order are *prima facie* and while deciding the suit, the trial court should not get influence by it.

11. At this stage, Shri Deopujari, learned counsel for the petitioner, makes a request to expedite the trial, as the land in question is the only income source.

12. Considering the request made by the learned counsel for the petitioner, I am of the opinion that no prejudice will be caused to the respondent-trust if the trial is expedited. Accordingly, I direct the trial court to expedite the trial and decide the same within one year.

13. Both the parties have undertaken to cooperate the trial court in deciding the matter within stipulated time.

(ANIL S. KILOR, J.)

Signed By:ABHIMANYU SHANKARRAO GULANDE
Personal Assistant
High Court Nagpur
Signing Date:27.07.2023 17:13
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