



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

Writ Petition No.1489 of 2020

Jayantilal s/o Popatlal Raichura (Dead) thr. LR's Vs. Jitendra s/o Janardhan
Ravikantiwar and anr.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri R.O. Sharma, Advocate for the Petitioner/s
Shri Deoul Pathak, Advocate for the respondent No.1

CORAM : ANIL S. KILOR, J.
DATED : 05.10.2023

1. Heard.
2. The original plaintiff being owner of the land in dispute filed the suit for ejectment and possession against the respondents. According to the petitioners, the respondent No.1 is the tenant and in that capacity, the possession was sought by them by filling Small Cause Suit No.16/2001 which was renumbered as Regular Civil Suit No.253 of 2013.
3. The respondent No.1/original defendant No.1 filed the counter claim, seeking decree of specific performance. As far as the agreement is concerned, the petitioners are not denying the said agreement.
4. The said suit as well as the counter claim came to be dismissed and the learned lower Appellate Court upheld the judgment and decree vide common judgment and decree dated 27.04.2019 passed in Regular Civil Appeal No.10 of 2014 filed

by the plaintiff and Regular Civil Appeal No.14 of 2014 filed by the defendant No.1.

5. The learned counsel for the petitioners has drawn attention of this Court to the judgment of the Hon'ble Supreme Court of India in the case of *Revanasiddayya Vs. Gangamma @ Shashikala and Another*¹, wherein it is held that the party is entitled to defend his possession over the suit land by taking recourse to the provisions of Section 53-A of the Transfer of Property Act, 1882 (for short "TP Act") but once his suit for specific performance stood dismissed, the protection available under Section 53-A of the TP Act was not longer available with him.

6. It is therefore, submitted that as the counter claim for specific performance filed by the defendant No.1 came to be dismissed, the defendant No.1 cannot claim any protection available under Section 53-A of the TP Act and therefore, he has now become a trespasser.

7. It is submitted that if petitioners now file another suit for possession in view of the law laid down in the case of *Revanasiddayya* (supra), the finding recorded in negative by the learned lower Appellate Court on the point No.4 i.e. whether the possession on the defendant is proved to be that of a trespasser ?, would come in the way of the petitioners.

8. I do not find favour with this submission for the simple reason that in the RCS No.253 of 2013, the plaintiff never

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claimed possession on the ground that, the suit for specific performance filed by the defendant No.1 came to be dismissed and as such the defendant No.1 can not claim protection available under section 53-A of the TP Act.

9. Thus, the finding recorded by the learned lower Appellate Court on the above referred point No.4 would not come in the way of the petitioners, if they file any suit for possession in light of the law laid down in the case of *Revanasiddayya* (supra).

10. In that view of the matter, I do not find any reason to interfere with the judgment and decree passed by the learned lower Appellate Court. Accordingly, the writ petition is **dismissed**.

[ANIL S. KILOR, J.]