

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

WRIT PETITION NO. 1471 OF 2023

Shivcharan Kanhaiyalal Dhandhore and ors __ Vs. __ Gokulchand Govindlal Sananda
and ors

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

Court's or Judge's orders

Mr.Anil Mardikar, Senior Advocate with Mr. V.R.Deshpande, Advocate for petitioner
Mr. Sunil Manohar, Senior Advocate with Mr. U.J.Deshpande, Advocate for Respondent No.1

CORAM : AVINASH G. GHAROTE, J.
DATE : 30/03/2023

1] Heard Mr. Mardikar, learned senior counsel for the petitioner and Mr. Manohar, learned senior counsel for the respondent no.1.

2] The petition challenges the concurrent findings by the Courts below, whereby in a suit for declaration and permanent injunction and alternatively for specific performance in respect of Plot no. 2, Survey no. 103, Nazul Sheet No. 24D, admeasuring 6080 sq.ft., along with superstructure of 1230 sq.ft, the application below Exh.5 seeking temporary injunction against the petitioner/defendant from disturbing the possession of the respondent/plaintiff has been allowed by the order dated 25.2.2019 (pg.281), which has in turn been

confirmed by the learned Appellate Court by the judgment dated 17.11.2022.

3] Mr. Mardikar, learned senior counsel submits that the first ingredient for grant of injunction under Order 39 Rules 1 & 2 of the CPC, namely the existence of a *prima facie* case is absent in the matter, as the respondent/plaintiff has no legal right to occupy the suit premises, in view of which the Courts below could not have granted the injunction against the petitioner/defendant. He therefore submits, placing reliance upon **Jamnadas Dharamdas vrs. Dr. J. Joseph Farrei, AIR 1980 SC 1605; Kamla Devi vrs. Lalxmi Devi; AIR 2000 SC 1640 and Norman Joseph Ferreira vrs. Arjandas New Andram; 2001(2) Mh.L.J 810**, that the impugned order below Exh. 5 and the judgment by the learned Appellate Court need to be quashed and set aside.

4] Mr. Manohar, learned senior counsel for the respondent no.1 supports the impugned order and judgment and submits that even if it is held that the right to occupy the land in question and the structure erected thereupon, is held to have expired, after the expiry of the period of original lease, the

plaintiff/respondent cannot be thrown out without following the due process of law.

5] The factual position in the matter indicates that, on 19.10.1919 a lease was executed by Rao Bahadur Deshmukh in favour of one Devidas Phadke, which was a lease for 95 years to expire on 1.10.2015, under the terms of which the original leasee was permitted to make construction. After making some construction, the construction and the lease hold rights were assigned by Devidas Phadke by a lease deed dated 9.8.1920 in favour of one Vinayak Thosar. Vinayak Thosar in turn executed a sale deed of the structure and lease hold rights on 23.11.1943 (pg.84) in favour of Narhari Kale, who in turn has gifted the same on 11.9.1960 to Janardhan and Mukund Kale. These persons in turn have by a sale deed dated 19.10.1966 transferred the same to the respondent no.1.

6] As the term expired on 01.10.2015 and the respondent no.1 apprehended forceable eviction, a suit came to be filed being RCS No.133/2018, [Gokudas vrs Seema and ors], with the prayer as indicated above, in which the relief of grant of injunction by allowing Exh.5 has been granted,

which in turn has been confirmed by the learned Appellate Court.

7] The contention that the respondent/plaintiff would not have any legal right to continue to occupy the premises and the land and therefore there is no *prima facie* case in existence in favour of the plaintiff, is clearly misconceived for the reason that even if the term of the original lease may have expired, the status of the leasees or their transferees would be that of a leasee-holding-over and therefore, since they are admittedly in possession, they cannot be permitted to be thrown out by use of force and any eviction has to be done by following due process of law in that regard.

8] In **Jamnadas Dharamdas** (supra), a suit was filed for eviction after the expiry of the period of lease, which was also the case in **Kamla Devi** (supra) and **Norman Ferreira** (supra). All these judgments do not take a view that a leasee-holding-over has to be thrown out without due process of law. In that view of the matter, I am not inclined to interfere the well reasoned order of the trial Court below Exh.5 dated 25.2.2019, as well as the judgment dated

17.11.2022 by the learned Appellate Court. The petition is therefore dismissed. No costs.

9] It is however made clear that it will be permissible for the petitioner to institute appropriate legal proceedings for eviction of the respondents and possession of the property in question.

JUDGE

Rvjalit