

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

CIVIL APPLICATION (CAA) NO. 36/2023
IN
APPEAL AGAINST ORDER NO. 33/2022

Pravin S/o Dashrath Karemore and another
Vs.
Ghanshyam S/o Wadguji Karemore and another

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

Court's or Judge's orders

Ms Smita P. Deshpande, Advocate for appellants
Shri A.D. Dangore, Advocate for respondents

CORAM : SMT. M.S. JAWALKAR, J.
DATE OF RESERVING THE ORDER : 03/05/2023
DATE OF PRONOUNCEMENT OF ORDER : 05/06/2023

Present application is filed by the respondent for vacation of interim order dated 25/08/2022. I have heard both the parties on Civil Application (CAA) No. 36/2023, at length.

2. It is contended that suit bearing No. 31/2010, is filed seeking declaration of cancellation of power of attorney and gift deed with permanent injunction against the defendant/appellant. Whereas, suit bearing No. 25/2011, filed by appellant came to be dismissed and power of attorney and gift deed were held illegal. During the pendency of suit there was interim injunction operating in favour of appellant

but at the time of passing of the judgment and decree, the Trial Court has restrained the appellants from disturbing possession of the respondent in respect of suit property in question. It is contended that in view of judgment of Trial Court dated 16/03/2022, the respondent tried to take possession of field in question. The appellant filed complaint with police station, Andhalgaon, stating that respondents are dispossessing them from the property in question. As such, it is contended that the respondent took possession on the said property on 08/05/2022 and on 20/05/2022, intimated same to the Police.

3. Present appeal against order is preferred by original plaintiff in Regular Civil Suit No. 25/2011 and plaintiff/appellant in Regular Civil Appeal No. 43/2022, against the order passed by Adhoc District Judge-1, Bhandara below Exh.5, whereby, rejected application for temporary injunction.

4. The brief facts can be summarized as under :

That the appellant herein are original plaintiff in Regular Civil Suit No. 25/2011. It is for declaration and permanent injunction. Respondents are original defendants. The respondents have also filed Regular Civil Suit No. 31/2010, before the Joint Civil Judge Junior Division, Mohadi, Dist. Bhandara. Both these suits were decided by

common judgment on 16/03/2022. It is the case of the plaintiff that he has become owner and is in possession of gat No. 224/1, area 2.20 H.R. on the basis of gift deed executed by the grand father of the appellants on 02/07/2010. The defendant also filed suit bearing Regular Civil Suit No. 31/2010, in respect of same agricultural land for declaration to the effect that the power of attorney in respect of suit land dated 21/06/2010 and gift deed dated 02/07/2010, alleged to be executed by grand father Wadguji Karemore, in favour of appellants, are illegal and not binding upon him and for permanent injunction. Both suits were consolidated and common order came to be passed, whereby, Regular Civil Suit filed by appellant herein bearing No. 25/2011, was dismissed and suit filed by respondent bearing Civil Suit No. 31/2010 is decreed. Two appeals were carried out. The appellant filed temporary injunction application, Exh.5, in Regular Civil Appeal No. 43/2022, which came to be rejected by the Adhoc District Judge, Bhandara. The said order is under challenge in the present appeal against order.

5. It is submitted by learned Counsel for the appellant that though suit of appellant is dismissed, it is challenged by the appellant by filing Regular Civil Appeal No. 43/2022, for grant of injunction. Even if, the Trial Court while dismissing the suit of present appellant and allowing the suit of respondent held that respondent is in possession, the

respondent cannot take possession forcibly without following due process of law. During the pendency of suit, injunction order was in favour of plaintiff and application for grant of temporary injunction in the suit filed by the respondent was rejected. As such, during the pendency of both these suits, the appellant was in possession of the suit property. The appellant was in possession from last eleven years due to order of injunction which was continued by this Court. There is no ground whatsoever to vacate that order.

6. As against this learned Counsel for the respondent vehemently submitted that the suit filed by appellant herein was dismissed and suit filed by present respondent came to be decreed. It is vehemently submitted that while deciding suit by common judgment, the learned Civil Judge Junior Division, Mohadi, specifically held that defendant Nos. 2 and 3 i.e. present appellant in Regular Civil Suit No. 31/2010, are permanently restrained from disturbing the possession of agricultural land bearing gat No. 224/1, area 2.20 H.R. situated at Mouza Andhalgaon, Tah. Mohadi, Dist. Bhandara. In view of this specific direction/injunction, whatever interim orders passed by the Court during the pendency of the said suit merged into final order.

7. It is submitted that on perusal of finding recorded against issues in Regular Civil Suit No. 31/2010, the

Trial Court held that plaintiff was in possession of suit property at the time of filing of the suit. As such, there is no prima facie case made out by the present appellant to grant injunction or to extend protection during the pendency of appeal. Therefore, it is prayed for vacation of interim order of protection in favour of appellant.

8. I have heard both the parties at length. In the suit filed by present appellant i.e. Regular Civil Suit No. 25/2011, the Trial Court allowed Exh.5 and defendants therein (respondent herein), were temporarily restrained from disturbing peaceful possession of plaintiff over land gat No. 224/1, area 2.25 H.R. of Andhalgaon. It needs to be noted here that this order came to be passed on 02/12/2011. Prior to that there was suit filed bearing No. 31/2010, by present respondent. In the said suit the plaintiff therein (present respondent) filed application Exh.5, under Order 39, Rule 1 and 2 of Code of Civil Procedure against defendant. The said application came to be rejected on 18/08/2010 and in the said application it was held that the defendant (appellant herein) would suffer irreparable loss, if injunction is granted and it was also held that balance of convenience lies in favour of defendant (present appellant). There is nothing on record to show that these order below Exh.5 were challenged by the respondent herein at any point of time. Thus, since 18/08/2010, the present appellant are in

possession of the suit land and respondents were restrained from interfering in the possession of the present appellant. Even if, the suit is finally decided and suit of present appellant is dismissed and suit of present respondents were allowed, it is under challenge in the first appeal Nos. 43/2022 and 49/2022. As such, it would be appropriate to protect the appellant during the pendency of appeal. During the last twelve years, it appears that appellant is in possession.

9. This Court vide order dated 25/08/2022, ad interim relief was granted and respondents/defendants were restrained from disturbing possession of the appellant over the suit property. As such, the respondents were never in possession of the suit property, during the pendency of the suit and after decision of the suit. Though it is held by the learned Trial Court that the plaintiff in RCS No. 31/2010, is in possession, however, this fact cannot be overlooked that possession of present appellant (defendants in RCS 31/2010) were protected for 11-12 years and there was no challenge to the interim order granted by the Courts below.

10. From the order below Exh.5, in both suits which were in force for eleven years, clearly goes to show that appellants herein were in possession of the suit property. As such, interim order passed by this Court dated 25/08/2022, is perfectly justified. Till the pendency of this appeal it would be

appropriate to protect the appellant herein from dispossession. Even if, there is judgment in favour of respondent, they cannot take law in their own hands and dispossess the appellants without following due process of law. As such, application is rejected. Appeal is expedited.

(SMT. M.S. JAWALKAR, J.)