

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

WRIT PETITION NO. 3987 OF 2018

1. Sau. Shakuntalabai @ Seema W/o.
Sureshsingh Gour, aged about 60
years, Occu.: Agriculturist,
R/o. B-2, Corporation Colony,
North Ambazari Road, Nagpur.
2. Ramsingh S/o. Gangaramsingh Bisen,
aged about 47 years, Occu.: Agriculturist,
R/o. Bisen Complex, Shravgi Plots,
Akola, Tahsil & District : Akola.

.... **PETITIONERS.**

// VERSUS //

Premsingh S/o. Gangaramsingh Bisen
(Dead) through Legal Representative:

1. Smt. Sushiladevi Wd/o. Premsingh
Bisen, aged about 60 years, Occu.:
Household,
2. Rupesingh S/o. Premsingh Bisen,
aged about 35 years, Occu.: Business,
3. Riteshsingh S/o. Premsingh Bisen,
aged about 35 years, Occu.: Business,
Resp. No.1 to 3, R/o. Bisen Complex,
Near Tower, Shrawagi Plots, Akola.
4. Sau. Vaishali Dipaksingh Rathod,
aged about 37, Occu.: Household,
R/o. Kailash Nagar, Plot No.79/102,
Adilabad, Dist.Adilabad, (Andhra Pradesh)

5. Sau. Neha Krupalsing Thakur,
aged about 37, Occu. : Household,
R/o. 307, Navi Peth, Near Sukhsagar
Hotel, Railway Station, Jalgaon
Khandesh, Tahsil & District : Jalgaon
(Khandesh)

.... RESPONDENTS.

Shri V.D.Muley, Advocate for Petitioners.
None for Respondent.

CORAM : ANIL S. KILOR, J.
DATED : FEBRUARY 02, 2023

ORAL JUDGMENT :

1. Heard learned counsel for the petitioners. None for the respondent, though served.
2. **RULE.** Rule made returnable forthwith.
3. The reversal of order of grant of injunction and allowing the appeal vide judgment and order dated 15/06/2018 passed by the Ad-hoc District Judge-1, Akola in Misc. Civil Appeal No.69 of 2013, is under challenge in this writ petition.

4. The petitioner is the original plaintiff who filed suit for declaration and permanent injunction along with application Exh.5 for interim injunction, restraining the defendants from disturbing possession of the plaintiffs over the suit agricultural land till final disposal of the suit. The interim injunction was granted by the learned trial Court vide order Exh.5, dated 08/03/2013 after holding that the plaintiffs are in possession of the suit property.

5. The defendants, feeling aggrieved by the said order of injunction carried an appeal before the Ad-hoc District Judge-1, Akola vide Misc. Civil Appeal No.69 of 2013, wherein though the learned lower appellate Court has categorically held that the defendants failed to prove that they are in possession of the suit property and therefore, the learned trial Court has rightly come to the conclusion that the plaintiffs are *prima-facie* in possession of the suit property, the appeal was allowed against the plaintiffs by observing that the plaintiffs have not approached with clean hands.

6. The learned counsel for the petitioner points out that after allowing the appeal this Court vide order dated 9th July 2018 continued

the order of injunction granted by the trial Court and as such there is an order of injunction in favour of the petitioners since 08/03/2013 i.e. from last about 10 years. It is therefore, submitted that as both the Courts below have categorically held that the plaintiffs are in possession of the suit property, injunction granted by the trial Court needs to be maintained.

7. There is no dispute that both the Courts have concurrently held that the plaintiffs are in possession of the suit property. However, as far as other findings recorded by the learned lower appellate Court while allowing the appeal is matter of trial. In the circumstances, the fact remains that from last 10 years, temporary injunction is in operation in favour of the plaintiffs.

8. In the circumstances, I am of the opinion that the judgment and order allowing the appeal and quashing and setting aside order granting temporary injunction by the trial Court needs to be quashed and set aside and the directions need to be issued to the trial Court to expedite the trial. Accordingly, I pass the following order:

- i) The writ petition is allowed.

- ii) The impugned judgment and order dated 15/06/2018 passed by Ad-hoc District Judge-1, Akola in Misc. Civil Appeal No.69 of 2013 is hereby quashed and set aside and thereby order dated 08/03/2013 passed below Exh.5 & 22 by learned 3rd Joint Civil Judge Junior Division, Akola in Regular Civil Suit No.948 of 2012 is hereby maintained.
- iii) The trial Court is directed to decide the suit expeditiously.

Rule made absolute accordingly. No order as to costs.

(ANIL S. KILOR, J)

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