



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD**

**12 WRIT PETITION NO. 9371 OF 2024**

**BALJIT SINGH BHARAT SINGH POONIA AND OTHERS**

**VERSUS**

**SHAIKH NADEEM SHAIKH AMIR**

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Advocate for the Petitioner : Mr. Murkute J.M.  
Advocate for Respondent : Mr. Palsikar Vikrant S.

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**CORAM : R. M. JOSHI, J.**  
**DATE : 9<sup>th</sup> DECEMBER, 2024.**

**PER COURT :**

1. Petitioners/original defendants in RCS No. 43/2023 have preferred this petition against the order passed by District Court in MCA No. 141/2023 whereby the petitioners are temporarily restrained from dispossessing the plaintiff without following due process of law.

2. The facts which led to filing of this petition are as under :

Respondent/plaintiff filed suit for injunction against the defendants. It is contended by the plaintiff therein that he is in the possession of suit premises on the basis of rent agreement executed on behalf of the owner of the suit property. In support of his contention, he has relied upon the said agreement as well as the shop license issued by the local authority to conduct the business.

3. Petitioners/ original defendants opposed the said suit and application exhibit 5 by filing say. It is the contention of the defendants that Nirmala is owner of the suit premises and that she has never inducted the plaintiff in the suit premises as a tenant. With regard to the agreement relied upon by the plaintiff, it is contended that the said agreement is a bogus document. These defendants filed counter claim before the trial Court wherein the relief was sought for removal of the plaintiff from the suit premises. Defendants to support their submissions, relied upon photographs, which indicates that the suit premises is in possession of owner.

4. In the backdrop of the contentions of rival parties, application exhibit 5 filed by plaintiff was rejected by trial Court. However in appeal the said order came to be reviewed and injunction is granted.

5. Learned counsel for the petitioners/ defendants submits that trial Court had rightly appreciated the pleadings and the evidence placed before it and rejected exhibit 5 which is wrongly interfered with by the Appellate Court. It is his submission that once the owner raises objection with regard to the document relied upon by the plaintiff, no injunction ought to have been granted against the

owner. To support his submission, he places reliance on the judgment of Hon'ble Supreme Court in the matter of *Padhiyar Prahladi Chenaji (Deceased) Through Legal Representatives Versus Maniben Jagmalbhai (Deceased) Through Legal Representatives and Others*, **(2022) 12 SCC 128**.

6. Learned counsel for the defendants/petitioners supported impugned order on the ground that once the possession of the plaintiff's over the suit property is admitted, and unless evidence is led with regard to the genuineness or otherwise of the agreement relied upon, the plaintiff could not have been removed from the suit premises except following due process of law. Thus, it is the contention that there is no error committed by the appellate Court in reversing order passed below exhibit 5 by the trial Court.

7. The facts as appear from the record indicate that plaintiff filed suit with specific averment that on the basis of rent agreement may be for a specific period, he entered into the suit premises. In so far as the said agreement is concern, dispute is raised by the defendant about its genuineness. The question before the trial Court was as to whether merely on the basis of written statement made by the defendants in reply, the document can be discarded or

kept out of consideration. Here in this case apart from the agreement in question, there is evidence in the form of the license issued under the Shop Act by the local authority in favour of plaintiff in respect of suit property. It is pertinent to note that in spite of the said document being within the knowledge of the defendants, no declaration is sought in that regard even when counter claim is filed.

8. From the pleadings of the defendants and the prayers made in the counter claim, at this *prima facie* stage it can be said that the plaintiff is in possession of the suit premises. The judgment of the Hon'ble Supreme Court in case of *Padhiyar* (supra) only shows that it is not necessary that a separate suit is required to be filed for the eviction. Here in this case already counter claim is filed for the eviction of the plaintiff. As such the said judgment does not support contention of petition. Thus, unless it is held by the trial Court that the document in question is fabricated document and that the possession of the plaintiff over the suit property is illegal, he cannot be directed to be removed from the suit premises.

9. It is also necessary to take note of the fact that the original owner is though is not a party, her constituted attorney is a party defendant. Learned Appellate Court has taken into

consideration the fact that the power of attorney is executed by the owner in favour of Baljeet Singh after the filing of the suit. This indicates that this is nothing but an attempt to deny to execution of the agreement by Pawan on her behalf.

10. Learned Appellate Court has rightly taken into consideration the aforestated facts and the injunction granted by the appellate Court is in consonance with law. Having regard above facts, this Court finds no perversity in the impugned order. Petition therefore, stands dismissed.

( R. M. JOSHI)  
Judge