

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

WRIT PETITION NO.3020 OF 2024

(Sau. Amena Begum Quazi (dead) thr. LR's Jawazuddin Riyazuddin Quazi and others
Vs. Zuberuddin Wahiduddin Quazi and others)

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

Court's or Judge's orders.

Mr. Shadan Khan, Advocate for Petitioners.
None for Respondents.

CORAM: N. R. BORKAR, J.

DATE: 11th OCTOBER, 2024.

This petition takes exception to the order dated 13.03.2024 passed by the District Judge-1, Hinganghat below Exh.31 in Regular Civil Appeal No.29/2023.

2. The petitioners are the legal heirs/representatives of one Amena Begum. Respondent no.1 herein had filed a suit against said Amena Begum for declaration, cancellation of sale-deed dated 30.06.1995 executed by respondent no.2, the mother of respondent no.1, in favour of said Amena Begum in respect of suit property and in the alternative for partition and separate possession. The learned trial court decreed the suit.

3. The petitioners being aggrieved by the judgment and decree of the learned trial court have filed first appeal before the District Court.

4. By order dated 10.07.2023 the first Appellate Court has stayed the decree of learned trial court.

5. The petitioners alleging interference by respondents with their possession over the suit property filed an application for temporary injunction. The learned first Appellate Court has rejected the said application by the order impugned.

6. I have heard the learned counsel for the petitioners. In spite of service, none appears for the contesting respondents.

7. The learned trial court on the issue of possession has recorded the following finding:

19] The agreement to sell is at exhibit 92. It shows delivery of possession of the suit property. Raju PW 2 has also admitted in cross examination that since 1994 the family of defendant no. 2 is cultivating the suit property. There was delivery of possession vide agreement to sell but the agreement to sell is not registered. It is executed on stamp paper of Rs. 20/-. Even though the document is not registered vide the agreement to sell defendant is not seeking to establish his title to the suit property. Sale deed is already executed in his favour, which is not in dispute. Vide the unregistered agreement defendant is not trying to bring about indirectly the effect of it which it would have been of registered document. The unregistered agreement to sell is considered only to gather whether the sale deed was the outcome of agreement to sell. Therefore, the unregistered document can be considered in evidence for collateral purpose.

8. Considering the above finding recorded by the learned trial court, the following order is passed.

9. The first Appellate Court shall endeavour to decide Regular Civil Appeal No.29/2023 within a period of six months from the date of receipt copy of this order.
10. Till the decision of the appeal, respondent nos.1 to 4 shall not interfere with the possession of the petitioners over the suit property.
11. The petition is disposed of in the aforesaid terms.

(N. R. BORKAR, J.)