



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

Appeal Against Order No. 33 of 2022

(1) Pravin s/o Dashrath Karemore,
A/a 43 years, Occ. Agriculturist,

(2) Prashant s/o Dashrath Karemore,
A/a 46 years, Occ. Agriculturist,
Both R/o Dr. Mukharji Ward, Bhandara
Dist. Bhandara.

... Appellants

- Versus -

(1) Ghanshyam S/o Wadguji Karemore
A/a 68 years, Occ. Agriculturist,

(2) Ashatai w/o Ghanshyamji Karemore,
A/a 68 years, Occ. Agriculturist,
Both R/o Andhalgaon, Tah. Mohadi,
Dist. Bhandara.

... Respondents

Mrs. Smita Deshpande, Advocate for the appellants

Mr. A. A. Naik with Mr. A. D. Dangore, Advocates for the respondents

CORAM : ANIL L. PANSARE, J.

DATE : 08-02-2024

JUDGMENT

Heard.

2. Admit. Heard finally at the stage of admission.

3. The appellants – original plaintiffs in Regular Civil Suit
No. 25/2011 filed before Joint Civil Judge Junior Division, Mohadi,

District Bhandara have challenged the order dated 14-6-2022 passed below Exhibit 5 by Ad-hoc District Judge-1, Bhandara in Regular Civil Appeal No. 43/2022.

4. The facts necessary to decide the appeal are as under.

The property under question was owned by Wadguji Karemore. He had two sons viz. Ghanshyam, Dashrath and Sadanand. Wadguji Karemore and his wife have, on 21-6-2010, executed power of attorney in favour of Dashrath, who has within ten days of execution of power of attorney, executed gift deed in favour of his sons, namely, Pravin and Prashant. Accordingly, Ghanshyam filed Civil Suit No. 31/2010 against Dashrath and his sons as also Wadguji for declaration and permanent injunction. According to Ghanshyam, the power of attorney and gift deed were illegal and not binding on him. Ghanshyam further averred that he is in possession of the suit property. He apprehended dispossession at the hands of Dashrath and his sons. Hence, he sought relief of permanent injunction in this regard. Pending suit, Ghanshyam had filed application, Exhibit 5 seeking interim relief for restraining Dashrath and his sons from disturbing his peaceful possession, which came to be rejected on 18-8-2010.

5. Later on, sons of Dashrath viz. Pravin and Prashant filed suit against Ghanshyam and his wife bearing R.C.S. No. 25/2011 for permanent injunction. They came up with a case that they are in possession of the suit property and accordingly by filing application, Exhibit 5 sought interim injunction, which came to be granted vide order dated 2-12-2011.

6. Admittedly, these two orders have been not challenged. The trial Court ultimately vide common judgment and order dated 16-3-2022, decreed R.C.S. No. 31/2010 filed by Ghanshyam and dismissed R.C.S. No. 25/2011 filed by sons of Dashrath. The Court declared that power of attorney dated 21-6-2010 and gift deed dated 2-7-2010 are illegal. On the point of possession, it is held that at the time of filing suit, Ghanshyam was in possession of suit property, however, pending suit, Ghanshyam has been dispossessed by Dashrath and his sons. The trial Court noted that by virtue of gift deed and power of attorney, temporary injunction was granted in favour of sons of Dashrath and under the garb of order of injunction, Ghanshyam has been dispossessed.

7. Despite recording possession of Dashrath's sons over the suit property, the trial Court has taken note of the fact that at the time of filing suit, Ghanshyam was in possession and accordingly passed an

order restraining Dashrath's sons, namely, Pravin and Prashant from disturbing possession of agricultural land bearing Gat No. 224/1 admeasuring 2.20 HR situated at Mauza Andhalgaon, Taluka Mohadi, District Bhandara.

8. The first appellate Court, taking note of the fact that the power of attorney and gift deed has been declared as illegal and by referring to 7/12 extract of the year 2001 onwards, found that *prima facie* case in favour of Ghanshyam and accordingly rejected the application filed by Dashrath's sons to protect their possession.

9. In my view, the first appellate Court failed to note from the judgment of the trial Court that in paragraph nos. 100 and 101, the trial Court has in unequivocal terms held that possession of the property is with Dashrath's sons. The first appellate Court has also ignored the fact that Ghanshyam had never challenged the orders passed by the trial Court in both the suits by which the application filed by Ghanshyam to protect his possession was rejected and that of Dashrath's sons was allowed. This order continued for about 14 long years. The fact that the power of attorney and gift deed had been declared illegal may not entitle the appellants to remain in possession of the suit property. The respondents, however, cannot dispossess the appellants without following due procedure of law.

10. Considering the findings of the trial Court coupled with the fact that the possession of Dashrath's sons was protected for 14 years and further considering the fact that appeal is continuation of suit, the first appellate Court committed an error in appreciating the facts on record and passed erroneous order by rejecting the application filed by Dashrath's sons to protect their possession over the suit property. There is thus no merit in the case.

11. At this stage, Learned counsel for the parties made a request to expedite the hearing of appeal. In my view, this request ought to be made before the first appellate Court. I am sure that the request so made will be considered by the first Appellate Court by giving weightage to the fact that the parties are litigating for 14 years.

12. The appellants have thus made out a case. Hence, following order.

ORDER

- (i) The appeal is allowed.
- (ii) The application, Exhibit 5 filed by the appellants in Regular Civil Appeal No. 43/2022 before the Principal District Judge, Bhandara is hereby allowed.

(iii) The respondents are hereby restrained from disturbing the peaceful possession of appellants over the suit land situated at Andhalgaon, Tahsil Mohadi, District Bhandara bearing Gat No. 224/1, area 2.20 HR and further they are restrained from changing the revenue record of the suit land till the decision of Regular Civil Appeal No. 43/2022 pending before the Principal District Judge, Bhandara.

(Anil L. Pansare, J.)

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