



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

Appeal Against Order No. 48 of 2023

[Hemant Ambadasrao Lakade and ors. ..vs.. Avakash Sudhakarrao Ingole and ors.]

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

Court's or Judge's orders

Mr. S. B. Gandhe, Advocate for the appellants
Mr. U. J. Deshpande, Advocate h/f Mr. S. S. Shingane, Advocate for
respondent nos. 1 to 3

CORAM : ANIL L. PANSARE J.

DATED : 12-02-2024

The appellants – original defendants are aggrieved by the order dated 5-6-2023 passed by learned 11th Joint Civil Judge Senior Division, Amravati in Special Civil Suit No. 62/2021. The learned trial Court, by impugned order, restrained appellants from disturbing peaceful possession of the respondents – original plaintiffs.

2. The respondents have filed suit for declaration that they are in possession of the commercial complex and prayed for injunction by restraining the appellants from interfering with their possession. According to the respondents, appellant no. 1 was a caretaker of the commercial complex. His duty was to protect the complex from encroachment. However, they have started ascertaining their rights on suit shops and kept certain goods therein. The respondents have accordingly filed the suit.

3. The appellants alleged that they are in possession of the suit shops. Learned counsel for the appellants has invited my attention to the agreement to sale dated

25-5-2012 allegedly executed by appellant no. 1 and respondent no. 1.

4. Admittedly, the suit shops are belonging to the respondents. The trial Court, therefore, observed, and rightly so, that the appellant nos. 2 and 3 (original plaintiff nos. 2 and 3) are not bound by the alleged agreement. Respondent no. 1 has disputed his signature as well. The recitals in the agreement indicates that possession has been handed over to the appellant no. 1. This agreement to sell is neither duly stamped in terms of the Maharashtra Stamp Act, 1958 nor duly registered in terms of Section 17 of the Registration Act, 1908. Therefore, in terms of Section 49 of the Registration Act, this agreement is inadmissible in evidence and no reliance of whatsoever nature could be placed on agreement to establish possession of the appellants. The trial Court will examine the issue of impounding the document once it is placed in service in terms of the provisions of the Maharashtra Stamp Act.

5. The appellants have, apart from the agreement, no documentary evidence to substantiate their claim that they are in possession of the suit shops. As against, the admitted position is that the respondents are the owners of the suit shops. In the circumstances, I do not find any error in the findings recorded by the trial Court that the appellants, under the garb of agreement, are trying to establish their possession. It is also the case of the respondents that the appellants have criminal antecedents and are trying to take over the possession.

6. With the above observations and upon finding no merit in the appeal, the same is dismissed.

(Anil L. Pansare, J.)

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