



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

WRIT PETITION NO.6915/2019

Bhavesh s/o Digambar Patke
aged 5 years, Occ. Student,
Minor through Natural Guardian,
Digambar Mahadeo Patke,
Aged 38 years, Occ. Service,
R/o Fattepurwadi, Mothi Umri,
Akola, Tq. Dist. Akola.

.....PETITIONER

...V E R S U S...

Pralhad Mahadeo Patke,
Aged 50 years, Occ. Agriculturist,
r/o Fattepurwadi, Mothi Umri,
Akola, Tq. Dist. Akola and also
at Mhaispur, Tq. Dist. Akola.

...RESPONDENT

Mr. A. S. Thotange, Advocate for petitioner.
Mr. A. J. Thakkar, Advocate for respondent.

CORAM:- ANIL L. PANSARE, J.
DATED :- 24.07.2024

ORAL JUDGMENT

Rule. Rule is made returnable forthwith. Heard finally
with consent of learned counsel for the parties.

Heard Mr. A. S. Thotange, learned counsel for the
petitioner and Mr. A. J. Thakkar, learned counsel for the
respondent.

2. The petitioner-original plaintiff has initially filed a suit simplicitor for injunction to restrain the respondent – original defendant from disturbing his possession over the suit property viz. agriculture land. Later on, the plaint came to be amended and the suit for specific performance of contract along with application for injunction was filed. The Trial Court was pleased to allow the application Exh.-5, by which the petitioner has prayed for an order of injunction to protect his possession. This order has been set aside by the First Appellate Court on the ground that the petitioner has not filed suit for specific performance of the contract.

3. It appears that the fact of suit having been amended has either been not brought to the notice of the First Appellate Court or has been ignored.

4. It appears that a registered agreement to sell has been executed by and between the plaintiff and defendant, which incorporates the recital that the suit property has been given in possession of the plaintiff. The respondent has refused to perform his part of contract on the ground that the transaction under question was a hand loan. This issue will be decided in due course. However, since the petitioner has filed a suit for specific

performance of contract and the possession of the suit property having been delivered to the petitioner, he is entitled to seek protection. In that sense, he cannot be dispossessed without following the due process of law.

5. In view of above, order dated 19.08.2019, passed by District Judge-II, Akola in Misc. Civil Appeal No.35/2017 is quashed and set aside. Order dated 29.04.2017 passed by 5th Jt. Civil Judge Junior Division, Akola, below Exh.-5 in Regular Civil Suit No. 147/2017 is restored.

Rule is made absolute in the above terms. No order as to costs

(Anil L. Pansare, J.)

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