



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

Writ Petition (WP) No. 7430 of 2023

Jitendra S/o Vinod Wasekar

Versus

Yogiraj S/o Ganpat Kunghadkar and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Dr. R.S.Sirpurkar, Advocate for the petitioner.

Shri R.R.Dawda, Advocate for the respondent nos. 1 to
10.

CORAM : ANIL S. KILOR, J.

DATED : 8th APRIL, 2024.

Heard.

2. The common order passed by the trial Court, below Exhibits 5 and 36 dated 15th November, 2022 rejecting the application Exhibit 5 filed by the petitioner and allowing application Exhibit 36 filed by the respondent and thereby denying temporary injunction to the plaintiff and granting it to the defendants, was confirmed by the learned Lower Appellate Court vide impugned judgment and order dated 7th September, 2023, is subject matter of challenge in this writ petition.

3. In the suit for permanent injunction filed by the petitioner/plaintiff seeking permanent injunction

from obstructing the possession of the plaintiff as regards disputed lands mentioned in paragraph 5 of the plaint, the petitioner along with suit filed an application for temporary injunction under Order 39 Rule 1 and 2 of the Code of Civil Procedure. At the same time, the defendant nos. 1 and 2 also moved an application for grant of *ex parte* injunction and thereby sought injunction against the plaintiff refraining him from interfering with lawful possession of the defendants.

4. The plaintiff is claiming possession over the suit properties on the basis of Will-Deed alleged to have executed in his favour by Anjanabai widow of Maroti Kunghadkar who is the successor Vithu Dharma Kunghadkar, son of the original owner of the land.

5. Whereas, the defendant nos. 1 and 2 are claiming injunction on the basis of title they received by way of succession.

6. In one of the proceedings before the Tehsildar in relation to mutation of the suit land, Tehsildar has observed that there is no partition effected between the family members but by way of oral partition, the parties are in respective possession of their land. Thus, it is apparent on the face of record that no partition is effected between the defendants who are the legal heirs of the original owner.

7. Moreover, the defendants are disputing the Will-Deed executed by Anjanabai in favour of the petitioner. Thus, *prima facie* title of the petitioner itself is under the cloud. Secondly, from the plaint it is evident that while seeking injunction no description of the property is given namely the four boundaries of the land in possession of the plaintiff.

8. In the above referred backdrop though the name of plaintiff is entered into records of rights pursuant to the Will-Deed, injunction was denied on the ground that there is nothing to show that the plaintiff is in exclusive possession of the suit properties.

9. It is further observed that the petitioner is not seeking partition. It is further held that the defendants are in joint possession of the suit property as it is their joint family properties and they are not claiming any independent share of the suit property.

10. In the circumstances, as the above reasons recorded by both the Courts below denying injunction in favour of the plaintiff, are just and proper, there is no perversity committed by both the Courts below.

11. As far as the grant of injunction in favour of defendants is concerned, both the Courts have concurrently held that from the record *prima facie* it is

established by the defendants that they are in joint possession of the suit properties as a joint owner.

12. Thus, as no perversity is committed by both the Courts below either denying the temporary injunction to the petitioner or granting temporary injunction in favour of the defendants, I do not find any merit in the present writ petition. Accordingly, the writ petition is dismissed.

[ANIL S. KILOR, J.]