



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

WRIT PETITION NO.4397/2021

Deepak s/o Tukaram Kokate and others

...Versus...

Sudam @ Vinayak s/o Vitthalrao Kakde and others

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

Court's or Judge's orders

Mr. J.B. Kasat, Advocate for petitioners
Mr. Tejas Deshpande, Advocate for respondents

CORAM : ROHIT W. JOSHI, J.

DATE : 18/09/2025

1. The respondents are the original plaintiffs. The petitioners are original defendants. The parties will be referred to as plaintiffs and defendants hereinafter.
2. The petitioners are husband and children of late Bebi @ Bhumika Kakde. The suit property is an agricultural land belonging to late Bebi @ Bhumika. The plaintiffs filed suit for declaration and ownership and perpetual injunction against the defendants with respect to suit property claiming that they have inherited the same from late Bebi @ Bhumika and they are in possession of the same.
3. As against this, the case of the defendants is that late Bebi @ Bhumika has executed Will in favour of defendant Nos.3 and 4 and accordingly, the defendants are in cultivating possession of the same. In this suit an application for grant of temporary injunction was filed by the plaintiffs *inter alia* praying that their possession should not be disturbed pending final disposal of suit. This application came to be rejected by

the learned trial Court vide order dated 03/04/2021. The learned trial Court has referred to affidavit of adjoining land owners who deposed that the defendants were in cultivating possession of the suit property. It is not in dispute that the suit property is situated in the village where defendants reside and the plaintiffs are residents of Amravati City. The learned trial Court has also observed that the plaintiffs have not explained as to how they were cultivating the land from Amravati. The learned trial Court in its order observed that the defendant No.1 being elder brother of deceased Bebi @ Bhumika was taking care and looking after the suit property intermittently.

4. The learned trial Court passed an order rejecting application for temporary injunction dealing with the aspect of physical possession. The plaintiffs had challenged the said order by filing an appeal being Misc. Civil Appeal No.5/2021 which came to be allowed vide judgment and order dated 14/09/2021.

5. Perusal of the judgment passed by the learned Appellate Court will demonstrate that the learned Appellate Court has dealt with the aspect of legality of Will and correctness of revenue entries. It is not in dispute that the litigation with respect to mutation entry is pending.

6. Perusal of the judgment passed by the learned Appellate Court will demonstrate that there is no discussion with respect to physical possession.

7. Learned Advocate for the defendants/petitioners contends that while dealing with application for grant of temporary injunction for protecting the alleged physical possession, the physical possession of the party is required to

be *prima facie* considered. Learned Advocate states that the learned trial Court has rightly rejected the application for grant of temporary injunction and the learned Appellate Court has reversed the order without dealing with the aspect of physical possession.

8. Per contra, learned Advocate for the plaintiffs contends that the plaintiffs are legal representatives of deceased owner and since the Will is suspicious it must be held that *prima facie* they are in possession of the property. However, such is not the finding recorded by the learned Appellate Court. The Appellate Court, as is rightly pointed out has not dealt with the aspect of physical possession. Learned Advocate for the plaintiffs is unable to point out any material to disturb the *prima facie* finding recorded by the learned trial Court with respect to physical possession of defendants over the suit property.

9. In view of the above, in the considered opinion of this Court, the writ petition deserves to be allowed and the same is allowed accordingly on the following terms. The judgment and order dated 14/09/2021 passed by the learned Incharge District Judge -2, Yavatmal in Misc. Civil Appeal No.5/2021 is quashed and set aside. The order dated 03/04/2021 passed by the learned Civil Judge Junior Division, Ner on application Exh.5 in Regular Civil Suit No.8/2021 is confirmed. No order as to costs.

(ROHIT W. JOSHI, J.)