



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

WRIT PETITION NO. 7544 OF 2023

Girish S/o Shriram Rahate

Vs.

Sau. Nanda W/o Trimbak Gharade and anr.

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

Court's or Judge's Orders.

Mr. A.S. Murty, Advocate for petitioner.

Mr. N.B. Kalwaghe, Advocate for respondent No.1.

Ms. Kalyani Marpakwar, AGP for respondent No.2/State.

CORAM : ANIL L. PANSARE, J.

DATE : 14.01.2025.

Heard.

2. The petitioner - original defendant No.1 is aggrieved by judgment dated 10.08.2023 passed by the learned Adhoc District Judge-1, Bhandara, thereby dismissing the Misc. Civil Appeal No.45/2022.

3. The trial Court had allowed the application filed by the respondent No.1 – original plaintiff and restrained the petitioner from creating third party interest in the suit properties as also from disturbing his peaceful possession.

4. Having heard both sides, it appears that the Courts below have found that respondent No.1 is holding possession on the basis of lease renewed by the Sub-Divisional Officer, Bhandara, in favour of respondent No.1 on 06.08.2013.

5. The grievance of the petitioner is that the original lease was in favour of Damduji Rahate. He expired. He had three sons Raghunath, Modku and Pralhad. These three sons have also expired. Modku had, however, transferred his share in favour of Gangadhar on 12.12.1963, by way of gift. Gangadhar is son of Raghunath. Pralhad has bequeathed his 1/3rd share in favour of petitioner – Girish by registered Will. In other words, there were two legal representatives alive after death of three sons of Damdu. Despite such status, lease has been renewed only in the name of Gangadhar. According to petitioner, respondent No.1 is not the relative, much less legal representative of Gangadhar. Thus, according to petitioner, the lease could not have been renewed in favour of respondent No.1.

6. The aforesaid controversy will be definitely tested before the trial Court. It is however, well settled that while deciding an application for interim relief, the Court has to take a prima facie view in the matter. In the present case both the Courts below were of the view that since respondent No.1 was in possession in terms of lease renewed in her favour, unless lease is held illegal, it will

be difficult to treat her occupation as unauthorized. I am informed that the petitioner has challenged lease in separate suit. If that be so, he is at liberty to seek necessary orders, if so desired, pending said suit.

7. In view thereof, I do not find any apparent error in the order passed by the Courts below. Both the Courts appear to be well within jurisdiction in exercising discretionary relief. There is no merit in the petition.

8. Hence, the petition is dismissed.

9. After passing order, the learned counsel for the petitioner submits that the lease has not been renewed in favour of respondent No.1. He has invited my attention to the order dated 05.04.2013 passed by the Sub-Divisional Officer, Bhandara. By this order, the lease has been renewed for the period from 01.04.2010 to 31.03.2040 in favour of respondent No.1. Thus, there is documentary evidence that the lease has been renewed in favour of respondent No.1.

10. The learned counsel for the petitioner submits that this lease could not have been renewed in favour of the respondent No.1. This argument has been already considered and finding rendered. Despite such status, the learned counsel for petitioner insisted to hear the matter which accordingly is reheard for sometime and having found no substance, the order passed earlier

is ratified with costs of Rs.5,000/- to be paid by the petitioner to the respondent No.1 within 15 days from today.

11. The writ petition is disposed of accordingly with no order as to costs.

(ANIL L. PANSARE, J.)