

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9037 OF 2015

Suryakant Laximan Dhulshette (Bodale),
Age: 57 years, Occ: Agri.,
R/o : Jalkot, Taluka Jalkot,
District - Latur

...PETITIONER
(Ori. Plaintiff)

versus

Madhav S/o Tukaram Dhulshette,
Age: 30 years, Occ: Agri.,
R/o :Jalkot, Taluka- Jalkot,
District - Latur

...RESPONDENT
(Ori. Defendant)

.....
Mr. Prashant N. Khedkar, Advocate for Petitioner
Mr. Subhash Chillarge, Advocate for respondent.
.....

CORAM : SUNIL P. DESHMUKH, J.

DATED : 15th SEPTEMBER, 2015

Order :-

1. Heard learned counsel for petitioner-original plaintiff and respondent-original defendant.
2. This petition has been moved by the plaintiff against the judgment and order dated 14-07-2015 in Miscellaneous Civil Appeal No. 29 of 2014 passed by District Judge-2, Udgir confirming the order dated 22-08-2014 on Exhibit-5 in Regular Civil Suit No. 363 of 2014,

passed by Civil Judge, Junior Division, Udgir, whereunder his request for temporary injunction in respect land Gut No. 148 *admesuring* 2 Aar land situated at village Jalkot, District Latur has been rejected.

3. It is being submitted on behalf of the plaintiff that in spite of registered sale-deed and consequent mutation entry being in favour of plaintiff the trial court, for matters which are not germane has refused to accede to the request under the temporary injunction application. Learned counsel for plaintiff submitted that by virtue of sale-deed, plaintiff is in possession of the property and that the respondent-original defendant was causing obstruction in the plaintiffs possession. Learned counsel further submits that in view of aforesaid strong circumstances, the judgments and orders passed by the trial and appellate court are not tenable being not inconsonance with aforesaid facts. He, therefore, urges for setting aside two orders, and granting injunction in favour of plaintiff.

4. Learned counsel for respondent – caveator, however, submits that trial as well as appellate court had scanned the entire material placed before them *inter-alia*, partition of properties between vendor and other persons concerned with the property and measurement which was carried out in the month of July, 2015, after execution of sale-deed wherein the defendant is found and considered to be in possession. Along with that there are affidavits of adjoining owners of the land to that effect.

5. Learned counsel for petitioner in support of his submission relies on the judgment in the case of *Shamrao Ganapt Chintmani Vs. Kakasaheb Laxman Gorde* reported in 2008 (2) *Mh.L.J.* 819 wherein the execution of sale-deed related to property under transaction between the parties had been admitted by the defendant. Under the circumstances, the court observed that this along with contemporaneous record placed before the court read with admission by defendant of execution of sale deed, proper appreciation of facts had been required in the matter.

6. In the present case, however, the situation cannot be said to be close to the facts as have been involved in the aforesaid case relied on by petitioner. This is not a matter between the vendor and vendee as is involved in said case. This is a matter between the plaintiff and third party. In the circumstances, it would be of little assistance to the petitioner to apply to the present circumstances.

7. Having regard to the provisions, particularly, Order 39 of the Code of Civil Procedure, 1908 and material on record coupled with affidavits with reference to defendant's possession taken into account by both the courts, concurrent findings, at this stage, cannot be termed to be perverse and, as such, do not warrant interference in writ jurisdiction.

8. In view of aforesaid, I do not deem it appropriate that this is a fit case in which interference is required by this court.

9. As such, writ petition stands rejected. It is, however, made clear that observations herein above made shall not influence the decision of the suit on its merits and shall have efficacy only to the extent of decision in the present writ petition. Taking into account the fact that the matter relates to small piece of land, the trial court may consider the same as expeditiously as possible.

Sd/-

(SUNIL P. DESHMUKH, J.)

MTK