

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (STAMP) NO.28113 OF 2015

Devanand Tukaram Kadam

.. Petitioner

Versus

Appaso Shankar Kumbhar

.. Respondent

Mr. C. G. Patil, for the Petitioner.

CORAM : R.M. SAVANT, J.

DATE : 28th OCTOBER, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 08.01.2013 passed by the Learned District Judge-3, Sangli, by which order, the Appeal filed by the Petitioner herein i.e. the original Defendant No.1 being Misc. Civil Appeal No.212 of 2011 came to be dismissed and resultantly, the order dated 23.11.2011 allowing the application Exh.5 filed by the Plaintiff for temporary injunction came to be confirmed.

2. The suit property is the share of the Plaintiff in land Block No.553 which was partitioned between the Plaintiff and the rest of the Defendants or their predecessors in title. It is the case of the Plaintiff that the Defendant Nos.2 to 5 have no right to execute the Sale Deed in favour

of the Defendant No.1 in respect of the share which has come to the Plaintiff. The Plaintiff has challenged the said Sale Deed. Both the Courts below have concurrently held that it is the Plaintiff who is in possession of the suit property and the Defendant No.1 is not. The said finding has been arrived at by the Courts below on the basis of the material on record which has been adverted to by the Courts below in the impugned orders. The Courts below have come to a conclusion that though the Defendant Nos.2 to 5 have executed Sale Deeds in favour of the Defendant No.1, there is no mention of the custard apple plantation as well as tin shed situated on the said land. According to the Courts below, the same is also borne out by the 7/12 extracts, wherein the name of the Plaintiff is appearing in the possession column in respect of the land on which there is a custard apple plantation for the years 2008-09, 2010 and 2011. Pertinently the Defendants have not raised any objection to the said entry. The Plaintiff has also produced the partition deed, wherein the boundaries of the share allotted to the Plaintiff are mentioned. The Courts below on the basis of the aforesaid material have recorded a finding of fact that the Plaintiff is in possession. In my view, having regard to the finding of fact arrived at by the Courts below at the prima-facie stage, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

3. Needless to state that the suit in question would be tried on its own merits and in accordance with law uninfluenced by the observations made in the instant order.

4. The hearing of the suit is however expedited.

[R.M. SAVANT, J]