

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION St.NO.28671 OF 2014**

**Sanjay Waman Bhagat (through POA Holder  
Mr. Rajendra Waman Bhagat)**

**..Petitioner**

**Vs.**

**Gajanan Bapurao Shinde**

**..Respondent**

**Ms Prabha Badadare for the Petitioner**

**CORAM : R. M. SAVANT, J.**

**DATE : 19<sup>th</sup> JANUARY, 2015**

**P.C.**

1           The Writ Jurisdiction of this Court is invoked against the order dated 21-8-2014 passed by the Learned District Judge-2, Satara, by which order, the Misc Civil Appeal No.53 of 2013 filed by the Respondent herein came to be allowed and resultantly the order dated 30-1-2013, passed below Exhibit 5 in Regular Civil Suit No.378 of 2012 came to be set aside and the injunction granted by the Trial court came to be vacated.

2           The Suit in question being Regular Civil Suit No.378 of 2012, has been filed by the Plaintiff for injunction to restrain the Defendant from disturbing his peaceful possession of the suit property. The Plaintiff relied upon the Sale Deed dated 30-5-2007 executed by the Defendant in his favour. It is the case of the Plaintiff that the Defendant has sold the suit property to him for the valuable consideration of Rs.42,000/- by executing the said Sale Deed. It is the case of the Plaintiff that the Defendant has also handed over possession of the suit property to him. It is case of the Plaintiff that his name has been

mutated in the record of rights. The Defendant has filed his Written Statement and has controverted the case of the Plaintiff. It is the case of the Defendants that there are other co-owners in so far as the land bearing Gat No.1 is concerned and he has an undivided share in the said land. It is the case of the Defendant that the Sale Deed is executed only as a security for the amount of loan taken by him from the Plaintiff and it was agreed that after he repays the amount, the Plaintiff shall re-convey the property to him. Accordingly the Defendant has repaid the amount, but the Plaintiff has not resold the property to him and in fact has filed the instant Suit which according to the Defendant is false. It is the case of the Defendant that the entire Gat No.1 admeasures 9 Hectares 24 Ares and is the joint family property of the Defendant and his brother and they have not partitioned it amongst themselves. The Defendant has further averred that there is no partition by metes and bounds and he therefore could not have sold the property in the said Suit. The Plaintiff filed an application for temporary injunction.

3           The Trial Court has by order dated 30-1-2013 allowed the said application for temporary injunction by observing that the case of the Plaintiff is more acceptable than the case of the Defendants and appeals to a man of ordinary prudence.

4           The Defendant aggrieved by the said order dated 30-1-2013 filed

Misc Civil Appeal No.53 of 2013. The Lower Appellate Court on a reconsideration of the material on record held that the Defendant could not have sold the property to the Plaintiff as the property is a joint family property and the Defendant has undivided share in it. The Lower Appellate Court held that the Plaintiff has not produced a single document though the Sale Deed is of the year 2007 and the Suit is filed in the year 2012 that he is in possession of the suit property. The Lower Appellate Court held that if the Plaintiff has purchased the undivided share the only remedy open to the Plaintiff is to file a suit for partition, however he cannot be granted the discretionary relief of injunction when the property has not been divided by metes and bounds and the Defendant i.e. the Vendor has an undivided share. The Lower Appellate Court has therefore observed that the Trial Court has erred in granting injunction merely on the basis that the case of the Plaintiff is acceptable without going into the material on record.

5           Having regard to the facts as aforestated, the Lower Appellate Court has for cogent reasons set aside the order passed by the Trial Court. It is well settled that a purchaser of an undivided share in a joint family property has to file a Suit for partition and cannot seek injunction against the co-owners. No case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

**[R.M.SAVANT, J]**