

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

WRIT PETITION NO.5535 OF 2015

Smt. Tarabai Ashok Jadhav and others

.. Petitioners

Versus

Shri. Uttam Vitthal Jadhav and another

.. Respondents

Mr. Prabhanjan Gujar, for the Petitioners.

Mr. S. B. Deshmukh a/w Mr. P. B. Bhargude, for the Respondent No.2.

CORAM : R.M. SAVANT, J.

DATE : 14th OCTOBER, 2015

PC.

1. There is a concurrent finding recorded by the Courts below in favour of the Respondents and against the Petitioners herein who are the original Plaintiffs as regards their entitlement for the discretionary relief of temporary injunction. Both the Courts below have rejected the application for temporary injunction on the basis of the material on record. Both the Courts below have recorded a finding that the third party purchaser i.e. original Defendant No.2 i.e. Respondent No.2 herein was put in possession of the suit property which according to the Courts below is also evidenced by the entry made in the 7/12 extract. In the Sale Deed in question which is the subject matter of the suit for partition and possession filed by the Petitioners/Plaintiffs. It has been mentioned that the property has been

sold for repayment of the loan of Shahu Sahakari Bank Limited. The said fact is also mentioned in the Agreement to Sale to which some of the Plaintiffs were parties being either the consenting parties or the witnesses. The father of the Plaintiff Nos.2 and 3 i.e. Ashok Jadhav was the consenting party along with Plaintiff No.2 Kiran Jadhav and Plaintiff No.3 Santosh Jadhav, whereas the Plaintiff No.1 Tarabai was the witness to the said Agreement to Sale. It has also been mentioned in the Agreement to Sale that the possession of the suit property has been handed over to the Defendant No.2. Both the Courts below having regard to the aforesaid facts therefore held that the Plaintiffs were not in possession of the suit property, whereas the Defendant No.2 was and therefore, the Plaintiffs were not entitled to the grant of temporary injunction. There can be no gain saying of the fact that the third party purchaser is entitled to file a suit for partition and possession of the share that he has purchased in the joint family property. As indicated above, facts of the instant case disclose that some of the Plaintiffs were consenting parties to the Agreement to Sale and one of the Plaintiffs was a witness. It is in the said perspective that the issue is required to be addressed. The said fact of some of the Plaintiffs being consenting parties and witness therefore dents the case of the Plaintiffs in so far as their entitlement to the grant of discretionary relief of temporary injunction is concerned. The other fact that is of

relevance is the entry in favour of the Defendant No.2 in the revenue record i.e. 7/12 extract, the presumption arising from the said entry in favour of the Defendant No.2 has not been rebutted by the Plaintiffs by any cogent material placed on record. In my view, therefore, the concurrent orders passed by the Courts below do not merit any interference at the hands of this Court in its Writ Jurisdiction under Article 227 of the Constitution of India. The Writ Petition is accordingly dismissed.

2. Though the Writ Petition is dismissed, the Defendant No.2 is directed to maintain status-quo. It is made clear that the transaction between the Defendant No.1 and Defendant No.2 and any further transactions that Defendant No.2 may enter into with any third parties, the third parties would be bound by the decision in the suit. Since the suit is of the year 2010, the hearing of the suit is expedited.

[R.M. SAVANT, J]