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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7478 OF 2016

Sachin Bhagwan Jadhav

PETITIONER

VERSUS

Subhadrabai Ashruba Jagtap & others

RESPONDENTS

.....
Mr. C. V. Dharurkar, Advocate for the petitioner
.....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 19th JULY, 2016

ORDER :

1. Heard learned advocate for the petitioner.
2. Mr. Dharurkar, learned advocate appearing for the petitioner - plaintiff submits that a document executed by respondent No.3 in favour of the petitioner is prior in point of time than registered sale deed, purportedly executed in favour of respondent No.1. In the circumstances, when the possession under a written document has been handed over to the petitioner, the courts ought to have given said document its due and courts have not referred to the chronology of events while appreciating the matter.
3. It is thus being submitted that the petitioner has a better

prima facie case, balance of convenience also lies in his favour and it is the petitioner who would suffer irreparable loss and as such, it is urged before this court to indulge into the request being made under the writ petition, to clamp injunction restraining the respondents from interfering with the possession of the petitioner over the suit property.

4. Perusal of the impugned orders shows that although, initially, *ad interim* injunction had been granted by the trial court, yet after hearing the parties, the trial court had rejected said request for temporary injunction, partly allowing the application restraining the defendants from dealing with and / or creating third party interest and / or transferring the suit property.

5. The appellate court has considered that while the petitioner's case is on the basis of a document purportedly executed by respondent No.3, respondent No.3 has not accepted its execution. Apart from aforesaid, respondent No.3 has dealt with the suit property in favour of respondent No.1, under a registered deed of sale, it appears that the same has been acted upon, as with reference to the same, revenue entries have also been taken.

6. Looking at that both the courts, trial as well as appellate, have concurrently held that the petitioner may not have *prima facie* case, balance of convenience is not in his favour or that he would not suffer irreparable loss, the three ingredients required for consideration for granting interim relief, it would not be a case wherein the court should interfere with the impugned orders in the discretionary powers, since the circumstances do not bring forth any material, which would show that the impugned orders are patently illegal or improper, at the interlocutory stage.

7. As such, writ petition is not being entertained and is rejected. However, having regard to that the suit is of the year, 2013, the trial court should proceed with the same expeditiously and dispose it of preferably within a period of one year from the date of receipt of writ of this order.

8. Needless to refer to that observations of the courts, including the ones by trial and appellate courts are at interlocutory stage and shall not influence decision making in the suit, which shall be decided on its own merits.

[SUNIL P. DESHMUKH, J.]