

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

WRIT PETITION NO. 4311 OF 2016

Shri. Shankar Janaba Sutar	... Petitioner
V/s.	
Shri. Ramesh Kalinga Lohar & Anr.	... Respondents

Mr. D.B. Patil for the Petitioner.
Mr. N.G. Samant i/b Sandeep Mahadik for the Respondent.

**CORAM : K. K. TATED, J.
DATED : 14/07/2016**

P.C.:

. Heard learned Counsel for the parties.

2 By this petition under Article 227 of the Constitution of India the Petitioner plaintiff is challenging the orders passed by the Trial Court as well as Appellate Court refusing to grant injunction in favour of plaintiff restraining the defendants from disturbing his possession in respect of suit property i.e. open vacant land admeasuring 189.59 sq. mtrs, out of Revenue Survey No. 96, Hissa No. 4,5,7 and 9 from Final Plot No. 54, C.T.S. No. 1946.

3 In the present proceeding, the petitioner plaintiff filed Special Civil Suit No. 8 of 2015 in the Court of Civil Judge, Senior Division, Gadhinglaj against defendants for seeking cancellation of Sale Deed dated 14.02.2014 and for declaration of *pre-emptive* rights in respect of suit land. It was the case of the plaintiff that plaintiff by registered Sale Deed dated 01.01.2012 purchased property admeasuring an area of

177.88 sq. mtrs out of final plot No. 54A (TP Scheme No.1) Survey No.96, Hissa Nos. 4,5,7 and 9, CTS No. 1945 having total area of 40.4 Gunths situated at Gadhinglaj from Defendant No.1. At the time of purchase of the said property Defendant No.1 agreed that remaining portion of the land to be sold to the plaintiff only, as and when he wants. It is the case of the plaintiff that since then plaintiff was using the suit property. It is the case of the plaintiff that without his knowledge, the Defendant No.1 sold the suit property to Defendant No.2 by sale deed dated 14.02.2014. Hence, plaintiff filed suit on 02.02.2015 for following reliefs:

- :(a) It be declared that Purchase Deed dated 14/2/2014 executed by and between Defendant No. 1 and 2, in respect of **Suit Land** is not binding upon Plaintiff as the same has been executed by Defendant No.1 in favour of Defendant No. 2, in breach of his assurances, promises and statutory responsibility casted upon Defendant No. 1 in respect of Plaintiff and therefore the same is liable to be cancelled and;*
- (b) It be further declared that since Plaintiff is in possession of **Suit Land** with consent of Defendant No. 1, he cannot be evicted from the **Suit Land** without following due process of law and*
- (c) It be further declared that Plaintiff has right to exercise his pre-emptive rights, in respect of Suit Land and Defendant No. 1 is liable to offer the **Suit Land** to Plaintiff and;*
- (d) Pending hearing and final disposal of the above Suit Matter, defendants be restrained from disturbing peaceful enjoyment and possession of the **Suit Land**, held by Plaintiff and;*
- (e) Pending hearing and final disposal of the above suit, since Plaintiff is ready and willing to pay price of the **Suit Land**, he may be permitted to deposit Purchase price as stated in Purchase Deed dated 14/2/2014, under protest, and*
- (f) To pass any other appropriate reliefs, in favour of Plaintiff as this Hon'ble Court may deem proper, suitable and fit, under the circumstances of the Matter, including cost of this*

proceeding.”

4 The Plaintiff preferred application Exh.15 on 27.07.2015 for an injunction order restraining respondents defendants from disturbing his possession of the suit property. During the pendency of the said application below Exh.15, the plaintiff preferred application below Exh. 22 dated 28.07.2015 for restoration of possession. Both those applications dismissed by Trial Court on 30.07.2015 on the ground that plaintiff lost the possession of the suit property in the month of June 2014 itself. The Trial Court held that the plaintiffs failed to produce on record any documentary evidence to show his possession over the suit property.

5 Being aggrieved by the order dated 30.07.2015 passed by the Trial Court the plaintiff preferred Misc. Civil Appeal No. 33 of 2015. The same was dismissed by the Appellate Court by order dated 11.02.2016 on the same ground that the plaintiff lost his possession of the suit property in the June 2014 and failed to produce on record any documentary evidence to show his right, title and interest in the same. Hence, the present Writ Petition.

6 The learned Counsel for the petitioner plaintiff submits that both the courts erred in coming to the conclusion that plaintiff lost his possession in the suit property in June 2014 itself. He submits that when plaintiff purchased part of final plot No. 54A by Sale Deed dated 01.01.2012 from Defendant No.1, Defendant No.1 allowed the plaintiff to use the remaining portion of the suit property for his benefit. He submits that the Defendant No.1 without intimating to the plaintiff sold

the suit property to the Defendant No.2 by Sale Deed dated 14.02.2014. He submits that both the Courts below failed to consider the fact that the Defendant No.1 himself allowed the plaintiff to use the suit property. He submits that both the courts below erred in coming to the conclusion that on the date of passing of order the defendant No.2 created third party right by Sale Deed dated 23.04.2015 in favour of third person and third person is in possession of the suit property. He submits that respondents defendants dispossessed the plaintiff without following due process of law. Hence, plaintiff is entitled for restoration of suit property and injunction restraining the defendants from disturbing his possession thereafter.

7 On the other hand, the learned Counsel for the respondents defendants submits that as on today, neither they are owners nor in possession of the suit property. Therefore, there is no question of granting any relief in favour of plaintiff. He submits that Defendant No.2 also sold suit property to the third party by Sale Deed dated 23.04.2015 and handed over the possession. He submits that these facts are considered by both the courts below and held that as the defendants were not in possession of the suit property, there is no question of granting any relief in favour of the plaintiff. Hence, there is no substance in the Writ Petition and same is required to be dismissed with costs.

8 I heard both the sides at length. There is no dispute between the parties that the Defendant No.1 executed Sale Deed dated 14.02.2014 in favour of Defendant No.2. Thereafter, during the pendency of the

present proceeding, Defendant No.2 executed registered Sale Deed dated 23.04.2015 in favour of third party and as on today neither Defendant No.1 nor Defendant No.2 are in possession of the suit property. Considering this fact, I do not find any reason to interfere with the concurrent findings of facts recorded by both the courts below.

9 Hence, following order is passed:

- a) Writ Petition stands rejected.
- b) Hearing of Special Civil Suit No. 8 of 2015 is expedited.

(K.K.TATED, J.)