

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

WRIT PETITION NO.7096 OF 2016

Gundu Laxman More and Anr.

..Petitioners.

Vs

Ujwalabai Ramesh Chendake

.. Respondent

Mr. G.M.Savagave , Advocate for Petitioners.

**CORAM : R.G.KETKAR,J.
DATE : 14/12/2016**

PC:

1. Heard Mr.G.M.Savagave, learned counsel for the petitioners at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as 'defendants', have challenged the Judgment and order dated 15.3.2012 passed by the learned Civil Judge, Jr. Dn., Akkalkot below Exhibit 5 in R.C.S. No. 62 of 2010 as also the judgment and order dated 7.2.2015 passed by the learned Adhoc District Judge-1, Solapur in Misc. Civil Appeal No.86 of 2012. By these orders, the learned trial Judge allowed the application Exhibit-5 filed by the respondent, hereinafter referred to as plaintiff, and issued injunction restraining the defendants from obstructing peaceful possession of the plaintiff over the suit property, i.e.land bearing Gat No.151/1 to the extent of 0.41 R. southern side middle portion land; land bearing Gat no.151/2 to the extent of 0.61 R.

western side land, situate at Village Karnur, more particularly described in paragraph 1 of the application, till final decision of the suit.

3. In support of this petition, Mr. Savagave submitted that in paragraph 9, the learned District Judge has referred to filing of R.C.S.No.65 of 2006 by defendants no.1 and 2. He submitted that the suit was dismissed on 31.1.2011. Appeal was dismissed by the learned District Judge on 22.11.2013. The learned District Judge thereafter observed that the defendants have not produced any document to show that the decision of the District Court is set aside by the superior court. Mr. Savagave submitted that the defendants have preferred Second Appeal No.250 of 2014 in this Court and the same is pending for admission.

4. Mr. Savagave submitted that whereas in the earlier suit the defendants herein have prayed for declaration that the sale deed dated 25.8.2003 is not binding upon their share, in the subsequent Regular Civil Suit No.120 of 2014 defendant no.1 prayed for declaration that the sale deed dated 25.8.2003 is sham and bogus.

5. Mr.Savagave submitted that the plaintiff filed application Exh.5 on 16.11.2010. Pending the application Exh.5 there was no ad-interim order. The application was allowed on 15.3.2012. For more than 1.1/2 years, no ad-interim order was operating in favour of the plaintiff. In short, he submitted that there was no

threat of defendant which warranted the Courts below to issue injunction against them. He, therefore, submitted that petition requires consideration.

6. I have considered the submissions advanced by Mr Savagave. I have also perused the material on record. The plaintiff has instituted suit for injunction restraining the defendants from causing obstruction to the plaintiff's possession over the suit property. The plaintiff has contended that she has purchased the suit property on 25.8.2003 and since then she is in possession of the suit property. As against this, defendant no.1 contended that he has not executed any sale deed in favour of the plaintiff. The Courts below have considered filing of suit by defendants no.1 and 2 against the plaintiff for declaration that sale deed dated 25.8.2003 is not binding upon their share. The suit instituted by defendants no.1 and 2 was dismissed. Appeal preferred by them was also dismissed. The Courts below have held that the sale deed dated 25.8.2003 is legal and valid and, the allegations of the defendants that the sale deed is sham bogus, cannot be accepted. It is no doubt true that aggrieved by this decision, the defendants have preferred Second Appeal in this Court and the same is pending for admission. At the time of considering the application for interim relief, the Court has to consider prima facie case, balance of convenience as also whether the plaintiff will suffer irreparable loss or hardship in

case injunction is not granted. After considering the material on record, the Courts below have allowed the application filed by the plaintiff and issued injunction against the defendants.

7. In view thereof, I do not find that any case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

(R.G.KETKAR, J.)