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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.3989 OF 2016

Appasaheb @ Rajebhau s/o Baban Hinge,
Age: 47 years, Occ: Agri.,
R/o. Mathephal, Tq. & Dist. Latur. ..PETITIONER

VERSUS

1. Nilesh s/o Shankarrao Khose,
Age: 32 years, Occ: Agri.&Service,
R/o. Vishal Nagar, Latur,
Through his power of attorney
holder Shankarrao s/o Mudrik
Khose, Age: 64 years,
Occ: Pensioner & Agri.,
R/o. Vishal Nagar, Latur,
Tq. & Dist. Latur.
2. Dagdappa s/o Baban Hinge,
Age: 62 years, Occ: Agri.,
3. Vithal s/o Baban Hinge,
Age: 59 years, Occ: Agri.,
4. Venkat s/o Baban Hinge,
Age: 56 years, Occ: Agri.,
5. Nirmalabai w/o Appasaheb Hinge,
Age: 46 years, Occ: Household,
6. Mangalbai w/o Balasaheb Zhambre,
Age: 49 years, Occ: Household,

All R/o. Mathephal,
Tq. Dist. Latur.

..RESPONDENTS

Mr Dhananjay P. Deshpande, Advocate for petitioner;
Mr S.P. Urgunde, Advocate for respondent No.1

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CORAM : NITIN W. SAMBRE, J.**DATE : 19th SEPTEMBER, 2017****ORAL ORDER :**

The petition is by the original defendant No.1 in Regular Civil Suit No.608 of 2012 pending on the file of Civil Judge, Senior Division, Latur for declaration of ownership and perpetual injunction.

2. The respondent-plaintiff claimed that defendant No.1 executed registered sale deed in his favour for area of 3 Acre 10 Gunthas land out of Gat No.25, which is the suit property. According to him, since the present petitioner-defendant tried to interfere with his possession, he was prompted to file suit in question. An application at Exhibit-5 moved in the suit came to be rejected by learned 7th Joint Civil Judge, Junior Division, Latur, vide order dated 27th September, 2012.

2. Feeling aggrieved thereby, respondent -

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plaintiff preferred an appeal being Misc. Civil Appeal No. 84 of 2012, which was allowed vide impugned order dated 26th February, 2016 passed by learned Adhoc District Judge-1, Latur. As such, this petition.

3. Mr. Deshpande, learned Counsel for the petitioner-defendant would urge that sale deed executed by present petitioner in favour of plaintiff-respondent was only for paper purpose and not to be acted upon. So as to substantiate the same, he would invite attention of this Court to the relationship between the parties, as plaintiff is nephew of the defendant, which fact, according to him, was suppressed by him from the Court. Mr. Deshpande, learned Counsel would then urge that 7/12 extract, affidavits of adjoining land owners speak of possession of defendant over the suit property and as such, the injunction granted by lower appellate Court is not sustainable. He would urge that the order impugned be set aside.

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4. Per contra, learned Counsel for the respondent-plaintiff would urge that the order of trial Court is based on the appreciation of the evidence only in favour of the defendant, as the trial Court has not appreciated the material, which was placed on record by the plaintiff-respondent. According to him, the affidavits of adjoining land owners and revenue record speak of possession of the plaintiff, which was appreciated and injunction was ordered by lower appellate Court.

5. Considered rival submissions. The execution of sale deed in 2004 in favour of the plaintiff by the defendant is not a disputed document. What is claimed by the petitioner - defendant is, same is sham document, which was never to be acted upon, as it was executed only for the paper purpose for some collateral reasons. Though the affidavits of adjoining land owners, revenue entries speak of possession of the respondent-plaintiff over the suit property, the fact which was appreciated by lower appellate Court

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in favour of the present respondent-plaintiff

6. Learned Counsel for the respondent – plaintiff was right in submitting that the trial Court appreciated and inferred the evidence in favour of the defendant in stead of appreciating evidence in favour of the plaintiff and analysis thereof.

7. Apart from above, the fact remains that pursuant to the document in question, there are revenue entries, which may be for fiscal purpose but fact remains that title of the suit property stood vested in the present respondent-plaintiff.

8. In the backdrop of above, in my opinion, the order of injunction passed by learned lower appellate Court does not call for any interference in extraordinary writ jurisdiction. As such, writ petition fails and stands dismissed.

(NITIN W. SAMBRE, J.)