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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.398 OF 2017

Mohammad Harun Abubkar
 Age - 40 years, Occ - Agriculture
 R/o House No.789, Guruwar Ward,
 Khushamatpura, Malegaon,
 Taluka - Malegaon, District - Nashik

PETITIONER

VERSUS

1. Raghunath s/o Balaji Gorde
 Age - 65 years, Occ - Agriculture
 R/o Ranjangaon Deshmukh,
 Taluka - Kopargaon, District - Ahmednagar
2. Baban s/o Balaji Gorde,
 Age - 75 years, Occ - Agriculture
 R/o Ranjangaon Deshmukh,
 Taluka - Kopargaon, District - Ahmednagar
3. Smt. Bebi Sampat Gorde,
 Age - 40 years, Occ - Agriculture
 R/o Ranjangaon Deshmukh,
 Taluka - Kopargaon, District - Ahmednagar
4. Maruti s/o Raghunath Gorde,
 Age - 60 yeas, Occ - Agriculture
 R/o Ranjangaon Deshmukh,
 Taluka - Kopargaon, District - Ahmednagar

RESPONDENTS

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Mr. D. S. Bagul, dvocate for the petitioner
 Mr. V. H. Dighe, Advocate for respondent No.2

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 13th JUNE, 2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard learned advocates for the appearing parties finally by consent.
2. This petition has been moved purporting to challenge order dated 8th November, 2016, whereunder petitioner's request for temporary injunction has been declined by appellate court reversing order passed by trial court granting temporary injunction application.
3. Mr. Bagul, learned advocate vehemently submits that property had been taken in possession way back in 1955 and that the respondents do not have any tenancy claim over suit property, since then. Names of respondents stand deleted from the record of suit property, under mutation entry bearing No.4194. The property had thereafter been duly purchased by the petitioner from original owners under a registered sale deed, putting the petitioner in possession. Further, he refers to that occupants of the property had vacated the property under agreements dated 16th August, 2013 and 19th August, 2013, which are notarized bearing photographs of the executants. However, the defendants tried to meddle with suit property despite execution of documents entailing institution of Regular Civil Suit No.53 of 2015 for perpetual injunction.

4. Mr. Bagul contends that having regard to aforesaid, trial court has duly granted temporary injunction as prayed for with reference to the documents on record as aforesaid. He submits that the appellate court has been in error in reversing the order and the same is based on conjectures and surmises. He contends that the appellate court has imagined the situation and its effect rather than assessing the documents produced on record on behalf of the petitioner. He submits that the appellate court has been in error in observing that the agreements with respondents No. 3 and 4 ought to have been before a proper court, where litigation has been pending and notarized documents could not help. He, therefore, urges to intervene in the matter and restore the position as had been subsisting prior to the impugned order dated 8th November, 2016 passed by District Judge – 2, Kopargaon.

5. Mr. Dighe, learned advocate appearing for the respondents vehemently contends that entire record which is sought to be placed reliance on is not reliable and is apparently manipulated. He submits that the appellate court has rightly adjudged, having regard to the situation, that although it is the case of the petitioners that the suit property had been delivered possession

of way back in 1955, creation of documents of 2013 itself stands testimony of possession of respondents over the suit property. It is not the case that the appellate court has hypothetically imagined the case. It has assessed the documents, its weight and its efficacy and the surrounding circumstances very aptly, at least at this *prima facie* stage. He submits that flurry of activity has suddenly taken place since suit for injunction had been instituted by present respondents against original owners of the property and the present petitioner. The suit is pending and during pendency of that suit, mutation entry has been caused behind the back of the respondents. The order has been passed on a single day and thereafter it has been shown that sale deed has been executed and possession had been parted with, which had not been there with the original owners. Further, in order to undo the suit filed by the present respondents bearing Regular Civil Suit No.97 of 2013, two documents extra litigation have been manufactured purporting to show that respondents No. 3 and 4 have vacated possession over the suit property. According to learned advocate, the documents are unreliable and are sham and bogus and could not have been relied on and the appellate court has rightly adjudged their inefficacy. He submits that pleadings and the record are at variance and thus appellate

court has allowed the appeal, which is not amenable for interjection under writ jurisdiction of this court.

6. Having heard learned advocates as aforesaid, appreciation by the appellate court as appearing under paragraphs No. 7, 8 and 9 is a possible view of the case at this stage and only for the reason that some other view can be had, as has been considered by the trial court, may not be a good reason in the given facts and circumstances of the case to meddle with the impugned order. In the given facts and circumstances of the case, appreciation at the interlocutory stage appears to be not such an appreciation which can be termed as perverse.

7. In view of aforesaid, I am disinclined to interfere with the impugned order. Writ petition, as such, stands dismissed. Rule is discharged.

8. It is, however, made clear that observations made hitherto by trial as well as appellate court and the observations under this order are only at the interlocutory stage of the proceedings and shall not influence decision on merits in the suit.

[SUNIL P. DESHMUKH, J.]