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

WRIT PETITION NO.6035 OF 2017

Deepak Tulshiram Pimpale	...	Petitioner
V/s.		
Anil Tulshiram Pimpale	...	Respondent

Mr. Bhalchandra Shinde i/by Prashant P.
Raut, for the Petitioner
Mr. Vaibhav V. Ugle, for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 21st DECEMBER, 2017.

P.C. :

1] Heard learned counsel for the petitioner and learned counsel for respondent.

2] By this petition, the petitioner is challenging the concurrent findings recorded by the trial Court and the Appellate Court of rejecting his application for interim injunction. The trial Court has recorded the said finding vide its order dated 1st October, 2014 passed below Exh.5 in R.C.S.No.132 of 2014 and the said finding is confirmed by the Principal District Judge, Raigad, Alibag vide his order dated 16.5.2017, of dismissing Misc. Appeal No.110 of 2016.

3] Undisputed facts of the case are to the effect that the

petitioner and respondent are real brothers interse. On 24th April, 1996, the sale deed in respect of the suit land was executed. The sale deed admittedly stands in the name of the respondent. As per the petitioner, he has given respondent the consideration amount of Rs.25,000/- for purchase of the said land. However, as he was not having necessary certificate of being an agriculturist and respondent has produced such certificate, the sale deed was executed in the name of respondent. The petitioner, however, was and continued to be in the exclusive possession of the suit land. Recently before filing of the suit, respondent started causing obstruction to his possession by making an application for measurement of the suit land before T.I.L.R. on 16.5.2014. Hence the petitioner was constrained to file the suit for injunction, alongwith this application for interim injunction.,

4] It is submitted by learned counsel for the petitioner that the trial Court has accepted and the Appellate Court has also not disputed the fact that the petitioner has given an amount of Rs.25,000/- by the cheque to the respondent. The counter slip to that effect is produced to show that an amount of Rs.25,000/- was credited in the account of respondent on 20/4/1992 whereas agreement was executed on 24.4.1996. Thus, it is submitted that prima-acie this evidence is sufficient to prove that the petitioner has also contributed the consideration amount for purchase of the suit land. Even the

affidavit of vendor Smt.Nirmala Balkrishna Shingrut is filed on record to show that as the certificate of being an agriculturist was in the name of respondent, the sale deed was executed in his name; whereas some part of consideration amount was given by the petitioner also. She has also stated that it is the petitioner who conducts festival of the Dutta Jayanti in the said land . He looks after and supervise the possession over the said land. According to learned counsel for the petitioner, neither the trial Court nor Appellate Court, has properly appreciated this documentary evidence and rejected the petitioner's application for interim injunction. Hence interference is warranted in the impugned order, passed by the Courts below.

5] Per contra , learned counsel for respondent has submitted that against concurrent finding of fact arrived at by the trial Court and the Appellate Court, this Court should be slow in interfering with the same in its Writ Jurisdiction especially when it is based on material on record.

6] I find much substance in the submission advanced by learned counsel for respondent that if one reads the order passed by the Trial Court and the Appellate Court, then this Court does not find that any reason is made out to interfere in the concurrent finding of fact recorded by the trial Court and the Appellate Court.

7] Admittedly the suit land was purchased in the exclusive

name of respondent. Though the petitioner has produced documents to show that he has advanced Rs.25,000/- to the respondent, as both the Courts below have observed, prima facie there is nothing on record to show that the said amount was advanced for the purchase of the suit land, as the entire sale deed is silent about same. In the 7x12 extract of the suit land also the name of respondent alone has been entered in the ownership and possession column. Even the R.T.S. Appeal preferred by petitioner for cancellation of said entry in the 7x12 extract has been dismissed on 30.03.2017.

8] This documentary evidence on record is more than sufficient to prove that the ownership and possession of the suit land stands in the name of respondent. As rightly observed by both the Courts below much evidentiary value cannot be given to the affidavits filed either by the vendor or by the adjacent owners in the face of these documents.

9] In view thereof, the impugned order passed by the trial Court and confirmed by the Appellate Court does not call for any interference.

10] The Writ Petition, therefore, stands dismissed.

11] At the request of learned counsel for petitioner, it is clarified that the abovesaid observations are made only for the purpose of deciding this petition and the trial Court shall not be

swayed by them.

12] Prayer made by learned counsel for petitioner for extension of status quo is rejected in the light of the reasons stated above.

[DR. SHALINI PHANSALKAR-JOSHI, J.]