

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

WRIT PETITION NO.605 OF 2017

Bhausahab Raghunath Gangurde ... Petitioner

Vs.

Smt.Nandini Baburao Khandekar ... Respondent

Mr.Sachin D. Kadam for Petitioner

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: APRIL 10, 2017**

P.C. :

1. This petition is directed against the order dated 24.11.2016 passed by the learned District Judge, Nasik in Miscellaneous Civil Appeal No.122 of 2015 thereby confirming the order dated 1.9.2015 passed by the learned Joint Civil Judge, Senior Division, Nasik, in Special Civil Suit No.477 of 2014 below exhibit 5. The petitioner is the plaintiff, who has filed a suit for specific performance of the sale of the suit property based on the agreement of sale dated 11.10.2001 which was executed by defendant No.1 i.e., respondent No.1 in favour of the plaintiff/petitioner. The suit property is a house alongwith some open space. Respondent No.1 i.e., defendant No.1, has executed

registered sale deed on 2.7.2010 and, therefore, the petitioner has also asked for a declaration of the said registered agreement dated 2.7.2010 as cancelled. He also prayed for injunction against the defendants. At the time of hearing of the interim application below exhibit 5, the trial Court has allowed the same partly and protection was given to the petitioner directing the defendants not to cause obstruction and interference in the lawful possession of the plaintiff/petitioner in the suit property until he is evicted by following due process of law. The petitioner in his application for interim injunction has also prayed that the defendants be directed not to create any third party interest in respect of suit property. However, the said relief was not granted by the learned Civil Judge Senior Division and also by the District Court in Miscellaneous Appeal filed against the said order of the trial Court.

2. The learned Counsel for the petitioner has submitted that the petitioner is in possession of the suit property from 2001. He has also developed the property by constructing the house and garage and he is running a business of welding from the suit premises. His residence, bread and butter are dependent on the suit property. He further submitted that the plaintiff is having a lawful possession

of the suit property pursuant to the agreement of sale, which was executed between the petitioner and the respondent No.1, the original landlord, in the year 2010. Though the petitioner pursued respondent No.1, he avoided to do so. Moreover, in the agreement of sale, there was a condition that respondent No.1, the original landlord, shall pay off the bank loan and will make the property free of any encumbrance. However, it was not done so and, therefore, the petitioner waited for a long time as the said condition of the contract was not complied with by respondent No.1. He further submitted that full payment of the suit property has been paid by the petitioner till August, 2009. He submitted that these facts are not taken into account by the trial Court and the District Court while denying the relief that the defendants shall not create third party interest in the suit property. The learned Counsel further submitted that this relief is necessary in order to avoid further multiplicity of proceedings.

3. Read the plaint, the application at exhibit 5 and also the orders passed by the Courts below. The respondent No.1 is the original owner of the suit property and he has already executed a registered sale deed in favour of respondent No.2 on 2.7.2010.

The petitioner apprehends that respondent No.2 will create third party interest in the suit property and, therefore, he has prayed for such relief. However, the learned trial Judge and the District Judge have considered this aspect of giving order in respect of injuncting the parties from not creating third party interest in the suit property in the light of delay in filing suit for specific performance by the petitioner.

4. Both the Courts below have protected the possession of the plaintiff by directing the defendants that they shall not cause any obstruction and interference in the suit property. It has also mentioned that if at all he is to be evicted, it is only after following due process of law.

5. Under such circumstances, I do not find any illegality in the orders passed by the Courts below. Petition is thus dismissed.

(MRIDULA BHATKAR, J.)