

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

WRIT PETITION NO. 1852 OF 2018

SHIDAJI HARIDAS JADHAV
VERSUS
SAGAR S/O VYANKAT GHODKE

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Advocate for Petitioner : Shri Akash Gadhe h/f. Shri S.J.
Salunke

Advocate for Respondent : Shri B.B. Bhise

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CORAM : RAVINDRA V. GHUGE, J.
DATED : 07th March, 2018.

PER COURT :-

1] The petitioner/original plaintiff is aggrieved by the judgment and order dated 06-09-2017, delivered by the Appellate Court, by which, Miscellaneous Civil Appeal No. 83/2016 preferred by the defendant is allowed and the injunction granted by the Trial Court below Exhibit 5 in Special Civil Suit No. 47/2016 has been quashed and set aside.

2] I have considered the strenuous submissions of the learned Advocate for the petitioner and the respondent. With their assistance, I have gone through the petition paper book and I have also perused the extract of the Notary's Register in

which the purported agreement to sell dated 19/05/2015 has been recorded at Latur, The non-judicial stamp paper of Rs.100/- is purchased by the defendant from Renapur is the contention of the plaintiff.

3] The petitioner/plaintiff is before the Trial Court alleging that an agreement to sell was signed by the defendant and the plaintiff, agreeing to sell the land gut No. 13 admeasuring 3 Hectors and 91 Ares for a consideration of Rs. 10,00,000/- (Rupees Ten Lakhs only). Rs.5,00,000/- (Rupees five Lakhs only) are said to have been paid by the plaintiff in cash to the defendant. The photograph of the defendant is affixed on the said agreement to sell which is a notarized document. A receipt is also said to be purportedly executed by the defendant after receiving Rs. 5,00,000/- (Rupees Five Lakhs only) in cash.

4] The defendant has taken a stand that he does not know the plaintiff and has not entered into an agreement to sell with him. It is a bogus document and which does not find the signature of the defendant. The defendant continues to hold the possession of the entire land, admeasuring 3 Hectors and 91 Ares.

5] The Appellate Court has noticed certain discrepancies in the non-judicial stamp paper as well as the register maintained by the Notary and the nature of erasing, discoloration and over writing. The register maintained by the Notary also exhibits a drastic change in the hand writing. Moreover, in a matter seeking specific performance of contract, when the Appellate Court noticed certain discrepancies in the agreement to sell and the register of the Notary, it has vacated the interim protection granted to the petitioner/plaintiff by the Trial Court.

6] This Court cannot go into disputed questions as to whether the notarized document is genuine or as to whether the register maintained by the Notary can be said to have been interpolated or manipulated. It is informed that the defendant has already sold his entire land admeasuring 13 Hectors 91 Ares to other persons by virtue of an agreement to sell dated 16/06/2015, by which the consideration is to be paid to the defendant by the purchaser within a period of 30 months.

7] Considering the above, it can only be observed in the light of Section 52 of the Transfer of Property Act that in the

event of third party rights being created by the defendant, the same would be subject to the result of the pending suit.

8] This petition is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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shp/-