

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2004 OF 2018

Shivlal Shamlal Thakare

Age: 38 years, Occu: Agriculturist,

R/o: At/Post Akhade,

Tal. Sakri, Dist. Dhule

...Petitioner

Versus

Tukaram Vithal Patil

Age: 64 years, Occu: Agriculturist &

Practicing Lawyer, R/o: At/Post. Vasdare

Tal. Sakri, Dist. Dhule.

...Respondent

...

Mr. S. P. Brahme, Advocate for petitioner

Mr. Subhodh P. Shah, Advocate for respondent/sole

...

[CORAM: SUNIL P. DESHMUKH, J.]

Date: 8th August, 2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2. Present writ petition has been preferred by original defendant in regular civil suit bearing no. 38 of 2016 in respect of land bearing Gat no. 350/6, admeasuring 1 hectare and 99.3 aar, situated at Akhade taluka Sakri Dist. Dhule.

3. Learned counsel for the petitioner purports to submit that petitioner is in possession of suit land. The case of the petitioner is that previously in the year 2003, Vaikunthalal Shah had agreed to sell suit property to the petitioner for an amount of Rs. 4,59,000/- on an oral agreement and according to the same, earnest amount of Rs. 50,000/- was paid by the petitioner. Pursuant to the same, possession was given to the petitioner in 2003 and since then, he is in possession of suit land. Subsequently in 2007, the agreement has been reduced into writing in favour of petitioner and the oral agreement was confirmed.

4. The petitioner had borrowed an amount of Rs. 1,00,000/- from the respondent-original plaintiff and towards security for the same, suit land was ostensibly sold by aforesaid proposed vendor of petitioner to the respondent-Plaintiff. However, it is being claimed by the petitioner that possession had not been parted with having regard to true nature of transaction. According to petitioner, the respondent was to convey suit property to petitioner after repayment / recovering the amount of

loan with interest. However, the respondent refused to execute conveyance of suit property in favour of petitioner and taking disadvantage of ostensible sale deed, regular civil suit no. 38 of 2016 was instituted by the respondent against the petitioner for injunction simplicitor along with application Exhibit-5 for temporary injunction. Said application came to be allowed on 31st March, 2017. Miscellaneous civil appeal no. 28 of 2017 filed by the petitioner against aforesaid order date 31st March, 2017 has also been dismissed under order dated 28th November, 2017, by appellate court.

5. Both the courts have appreciated material on record. Courts at interlocutory stage have found the respondent-plaintiff to have stronger *prima facie* case and that balance of convenience goes in favour of the plaintiff and he would suffer irreparable loss. The courts found that entries in revenue record do not support the petitioner. The appellate court has considered that reliance is being placed by the petitioner on documents which were not available before the trial court and mere electricity bills or quotation are not conclusive proof or

evidence of possession nor those create any presumption of petitioner's possession. Both the courts concur on refusal to exercise discretion in favour of petitioner. No circumstances have been brought forth to overturn and meddle with decision rendered refusing to exercise discretion in favour of petitioner. At this stage, case may not carry any substance in favour of petitioner.

6. In the circumstances, writ petition is dismissed.
Rule discharged.

[SUNIL P. DESHMUKH, J.]

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