

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5062 of 2018

Sampat Ranba Gaikwad

Petitioner

Versus

Maroti Kondiba Gaikwad & anr.

Respondents

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Mr. M.V. Ghatge, Advocate for the petitioner

Mr. S.V. Chandole, Advocate h/f Mr. V.T. Sakolkar for the respondent
No.1

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Coram : N.M. Jamdar, J.

Date : 19 November 2018

Oral Order :

The petitioner has challenged the concurrent orders passed by the learned Civil Judge and learned District Judge granting temporary injunction to the respondent-plaintiff. It is the contention of the petitioner that the respondent-plaintiff has filed First Information Report to the police wherein himself has admitted that he is not in possession. The learned counsel for the petitioner submits that the sale deed relied upon by the respondent-plaintiff is a nominal sale deed and respondent-plaintiff is a money lender. The learned counsel for respondent has

supported the impugned order.

2 Both the Courts have taken note of the sale deed, which contains a recital that the respondent-plaintiff is put in possession. Mutation entry is effected in favour of the respondent-plaintiff. As against this documentary evidence, there is only a oral version of the petitioner and two witnesses. As regards to First Information Report, if the petitioner has sought to exercise force, the respondent may have had to approach the police authorities for protection, and on that ground alone the order of injunction passed in favour of the respondent-plaintiff, cannot be set aside. Both the courts have evaluated the evidence of the parties on the existing prima facie case and they have relied on the documents produced by the respondent-plaintiff. This exercise cannot be considered as perverse and merely on the ground that other view is possible, no interference is warranted in Article 227 of the Constitution of India. The observations made in both the impugned orders are prima facie and the suit will be tried on its own merits. Writ Petition is accordingly rejected.

N.M. Jamdar, J.