

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

WRIT PETITION NO. 9906 OF 2018

**MADHAV GANGADHAR BODKHE
VERSUS
BALAJI BALIRAM CHANDAPURE**

...

Advocate for the Petitioner : Shri A. V. Patil Indrale
Advocate for the Respondent-sole : Shri S. C. Bhosle

...

CORAM : RAVINDRA V. GHUGE, J.

DATED : 29th AUGUST, 2018.

...

PER COURT :

1. The petitioner-original defendant in Regular Civil Suit No. 71/2018 is aggrieved by the judgment and order dated 04/08/2018 delivered by the appellate Court in MCA No. 9/2018, by which, the Miscellaneous Civil Appeal is allowed and the order of the trial Court refusing injunction to the plaintiff is set aside.

2. I have considered the strenuous submissions of the learned Advocate for the petitioner-defendant and have gone through the ten grounds formulated by him in the memo of the petition.

3. The contention of the petitioner is that a nominal sale-deed was signed between the petitioner and the respondent-plaintiff with regard to the agricultural land gut No. 23/4 admeasuring 1 H. and 20 R., situated at Nagthana, Tq. Umri, Dist. Nanded. The petitioner had received an amount of Rs. 5,00,000/- (Rs. Five Lakhs only) from the respondent which is said to be a loan amount which was given by the plaintiff to the defendant. It is further stated that the defendant has repaid the entire loan amount alongwith interest, a sum of Rs. 7,00,000/- (Rs. Seven Lakhs only) within one year, in cash. When the defendant demanded the return of the land, the plaintiff approached the trial Court and has filed the suit seeking injunction against the defendant. The defendant is said to have approached the competent authority under the Maharashtra Money Lending (Regulation) Act, 2014, before the suit was instituted.

4. Reliance is placed on the judgment of the Honourable Apex Court in the matter of *Mohd. Mehtab Khan and others Vs. Khusnuma Ibrahim and others, 2013, AIR SC 1099*, to

support the contention of the defendant that when the trial Court exercised discretion and refused interim injunction/temporary injunction, the appellate Court should not have interfered with the said findings merely because a second view is possible.

5. The petitioner-defendant denies that by virtue of the registered sale-deed, any possession was handed over to the plaintiff. It is further denied that the plaintiff is in possession of the suit land.

6. I find from the order of the trial Court that, (a) though it has recorded that the plaintiff is shown to have purchased the suit land by virtue of a registered sale-deed, (b) though possession is said to be handed over to the plaintiff, (c) though 7/12 extract is in favour of the plaintiff and (d) though the mutation entry was taken on 23/04/2017 on the basis of the registered sale-deed, are in favour of the plaintiff, interim injunction is refused as the defendant had approached the District Deputy Registrar of the Co-operative Societies, Nanded who is the DDR under The Maharashtra Money Lending Act,

2014, on 21/05/2018. The balance of convenience was held to be in favour of the defendant.

7. The appellate Court while considering the grievance of the plaintiff has recorded that the only action initiated by the defendant is in the form of approaching the DDR with a representation on 21/05/2018 and this cannot be a ground for denying injunction to the plaintiff.

8. It is noteworthy that a registered sale-deed stands in favour of the plaintiff which also mentions that the possession of the suit land is handed over to the plaintiff. The mutation entry No. 1132 is effected on 23/04/2017 pursuant to the sale-deed dated 27/01/2016, in favour of the plaintiff and the 7/12 extract is also carried out in the name of the plaintiff as the owner of the property. With these statutory documents in favour of the plaintiff, the appellate Court noticed that the trial Court had not applied its mind to these statutory records and hence, the trial Court order refusing injunction was held to be perverse and erroneous.

9. Considering the above, I do not find that the appellate Court has interfered with the order of the trial Court merely because a second view is possible. Considering the law laid down by this Court in *Shrikant R. Sankanwar and Ors. vs Krishna Balu Naukudkar, 2003 (3) BomCR 45*, these statutory documents like the registered sale-deed, are material while carrying out mutation entries indicating the name of the land owner. Such statutory documents out weigh other documents as these statutory documents have a presumptive value. The appellate Court, therefore, appreciated that these documents in favour of the plaintiff and with no challenge to the mutation entry or the 7/12 extract by the defendant, except moving an application to the DDR on 24/05/2018, entitle the plaintiff to injunctory orders.

10. In view of the above, I do not find that the impugned judgment of the appellate Court could be termed as being perverse or erroneous.

11. Nevertheless, since the suit is still pending, I find it appropriate to direct the plaintiff not to alienate the suit

property or create any third party interest or any encumbrances without the leave of the trial Court during the pendency of the suit.

12. This petition is, therefore, dismissed.

13. Needless to state the observations of the appellate Court as well as of this Court are restricted to the application for seeking temporary injunction.

(RAVINDRA V. GHUGE, J.)

shp/-