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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 200 OF 2016**

Shri. Sachin Santu Gunjal

.....Petitioner

V/s.

Shri. Savliram Parshuram Bhandure and othersRespondents

Mr. R. M. Khairnar a/w Mr. Pramod N. Joshi for the petitioner.

Mr. Sanjay G. Ghaisas for the respondent for respondent nos. 9 & 10.

CORAM : NITIN W. SAMBRE, J.**DATE : 27th JUNE, 2018.****P.C.**

The order impugned in the present petition is in regard to restoration of possession in favour of the respondents/original defendants pursuant to the provisions of section 144 and section 151 of Code of Civil Procedure.

2 The petitioner/original defendant, based on notarized

agreement dated 09/04/2001 initiated suit in question with prayer for declaration of his title and possession adverse to the interest of the defendants. Needless to say that the agreement dated 09/04/2001 particularly clause 6 speaks of handing over of possession to the petitioner of the suit property.

3 So far as the respondents are concerned, they claim their right, title and possession by virtue off a registered sale deed executed in their favour vide sale deed dated 02/04/2004 wherein they have claimed to be in possession of suit property.

4 It is in this background, the respondents claim its possession and sought restoration of possession.

5 The impugned order directs restoration of possession to the respondents which is questioned by the petitioner/plaintiff. Amongst other, the grounds which are raised in the petition are provisions of section 144 of the Code of Civil Procedure will not be attracted in the facts and circumstances of the present case. According to the

petitioner, since 09/04/2001 i.e. the date of notarized agreement, they are in a settled possession for last more than 11 years. There is an electricity bill and payment of tax receipt of 2011 onwards in favour of the present petitioner which piece of evidence is not appreciated by the Court below. It is further claimed by the learned counsel for the petitioner that the order impugned directing the restoration of the possession ought not to have been passed in the suit against the petitioner/plaintiff.

6 *Per contra* the learned counsel for the respondent would urge that if the possession was handed over to the present petitioner/plaintiff, the notarized agreement cannot be read to the benefit of the petitioner when handing over of possession mandates the registration of the instrument in question under the Registration Act. He would then urge that there is a registered sale deed in favour of the present respondent and based on the same, respondents are enjoying the property. According to him, it is pre-mature to infer that the possession of the present petitioner is adverse to that of present respondent or the original owners. He sought dismissal of

the petition.

7 Considered rival submissions.

8 If the submissions of the respective counsel in the backdrop of pleadings, the documentary evidence brought on record appreciated, the fact remains that the qualifications required under section 144 of the Code of Civil Procedure are not made out in the present case as it is not the case of the respondent that they were dispossessed by the petitioners by virtue of any order passed in the suit.

9 However, the order impugned can be considered in the backdrop of provisions of section 151 of Code of Civil Procedure.

10 It is to be noted that the petitioner has rest his case on the basis of notarized agreement dated 09/04/2001. According to him, by virtue of clause of possession incorporated in the said agreement, he remained in possession since April 2001 till the date of filing of the suit. The suit was filed in 2001. Even if it is presumed that the

petitioner has every right to raise a plea of adverse possession based on an agreement dated 09/04/2001, it is required to be established by the petitioner that his possession was within the knowledge of respondent land owner and he remained in uninterrupted possession of the suit land for 12 years preceding the date of filing of the suit. It is also required to be established that his possession was never questioned by the rightful owner, inspite of the knowledge of possession of the petitioner. The principle of adverse possession as is spelt out from the provisions of Transfer of Property Act speaks of appreciation of a claim of a person *qua* settled possession over the suit property *qua* the true owner of the said property.

11 From the dates as reflected herein above, it is abundantly clear that the petitioner-plaintiff is unable to establish that he remained in settled and uninterrupted possession of the suit property for a period of 12 years, preceding the date of filing of the suit and as such his contention that he is in lawful possession of the suit property is not established by him by discharging the burden as such burden is required in law to be discharged by the plaintiff who

has raised the plea of adverse possession.

12 Apart from above, if the evidential value of both documents viz. Notarized agreement in favour of the petitioner on 09/04/2001 and registered sale deed in favour of the respondent on 02/04/2004 if appreciated, this Court or the Court below is bound to accept the registered document in favour of respondents wherein the possession is lawfully handed over to the respondents.

13 Apart from above, there is no independent piece of evidence so as to appreciate the settled possession of the petition over the suit property w.e.f. 09/04/2001 in absence of any payment of electricity bill receipts, payment of tax etc.

14 That being so, in my opinion, the order impugned does not warrant any interference. Petition fails, same stands dismissed.

[NITIN W. SAMBRE, J.]