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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 845 OF 2017

Prakash Jagannath Gadekar	...Petitioner
vs	
Nagnath Karbasaya Swami	...Respondent.

.....
Mr Sachinkumar P. Rajepandhare for the Petitioner.
Mr Ashok B. Tajane for the Respondent.
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**CORAM : B.P.COLABAWALLA, J.
DECEMBER 12, 2018.**

P.C. :

This Writ Petition challenges the order dated 20th February, 2016 passed in Civil Miscellaneous Application No. 16 of 2016. By the impugned order the Appeal Court (Ad-hoc District Judge-I, Solapur) reversed the order of the Trial Court and allowed the appeal by granting the injunction as prayed for by the Plaintiff in Exh.5, filed before the Trial Court.

2 Originally the Plaintiff filed Regular Civil Suit No. 945 of 2015. In this suit the principal challenge was to the sale-deed dated 22nd May, 2007. In the said suit it was the case of the Plaintiff that the sale-deed is null and void as it was entered into only for the purpose of

giving security to the Defendant for the loan that the Plaintiff had availed of from the Defendant. According to the Plaintiff the sale-deed was never to be acted upon.

3 In this suit the Plaintiff also filed an application for injunction (Exh.5) for protecting his possession. This application was heard by the Trial Court and by its order dated 11th January, 2016 dismissed Exh.5. Being aggrieved by this order, the Plaintiff preferred an appeal being Civil Miscellaneous Appeal No. 16 of 2016. After hearing respective parties this appeal filed by the Plaintiff was allowed. It is aggrieved by this order passed in the appeal that the present Writ Petition has been filed.

4 In this background the learned counsel appearing on behalf of the Petitioner submitted that the Trial Court had categorically recorded that the Defendant was in possession of the suit property and in these circumstances, the Trial Court correctly rejected the application filed by the Plaintiff for protecting his possession. He submitted that the Appeal Court had gone completely wrong in reversing the order passed by the Trial Court especially considering that the Trial Court had given to a categorical finding that the Defendant was in possession of the suit premises.

5 I have heard the learned counsel for parties at some length. I have also perused the order of the Trial Court as well as that of the Appeal Court. I am not impressed with the arguments canvassed on behalf of the Petitioner (original Defendant). The Appeal Court has set out the facts in great detail. After setting out the facts, in the reasons recorded by the Trial Court, it has given a *prima facie* finding that the sale-deed that was executed by the Plaintiff in favour of the Defendant, was for a security towards the loan that was obtained by the Plaintiff from the Defendant. The Appeal Court also took note of the fact that despite the sale-deed being dated 22nd May, 2007 no effective steps were taken to have the property mutated in the name of the Defendant. In fact the first application made for mutation was only in the year 2012. The Appeal Court has also found that on 12th November, 2014 the Plaintiff received certain amounts from the Government under “Drought Relief Fund”. The Appeal Court also taken into consideration several affidavits filed on behalf of the Plaintiff by different parties stating that the Plaintiff was in possession of the suit property. The Appeal Court has also taken into consideration that other parties also have filed suits against this very Defendant on similar grounds being Regular Civil Suit Nos.478 of 2018, R.C.S.No. 448 of 2012, R.C.S.

No.960 of 2012 and R.C.S. No. 1170 of 2015 and which are pending. Looking to all these facts, the Appeal Court came to a *prima facie* finding that the Plaintiff is in possession, and therefore, his possession ought to be protected. It is in these circumstances, that Exh. 5 came to be allowed by the Trial Court, though rejected by the Trial Court.

6 I have gone through the impugned order in great detail. This order has been passed after recording all the facts and giving detailed reasons. I find that the Appeal Court has correctly applied its mind to all the facts of the case before coming to its *prima facie* finding. I do not think that there is anything in this order that is either perverse that would require my interference under Article 227 of the Constitution of India. Equally I do not find that the impugned order is vitiated by any error apparent on the face of the record that would require interference in my limited writ jurisdiction. As mentioned earlier, the order of the Appeal Court is based on the facts before it and the findings given by the Appeal Court are certainly plausible. This being the case I do not find any merit in this Writ Petition. It is accordingly dismissed. However, there shall be no order as to costs.

(B.P.COLABAWALLA, J.)