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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4594 OF 2019

Prabhakar Maruti Salunke

PETITIONER

VERSUS

Haribhau Maruti Salunke

RESPONDENT

.....
Mr. Hrishikesh V. Tungar, Advocate for the petitioner
.....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 19th NOVEMBER, 2019

ORDER :

1. Heard learned advocate for the petitioner.
2. After hearing learned advocate, it emerges that application for temporary injunction had been moved on the basis of exchange deed, which is claimed to have been executed by present respondent, exchanging lands *inter se*, as referred to in the deed of exchange. It is undisputed that exchange deed is not a registered document and property is worth more than Rs.100/-. Mutation on the basis of said exchange deed had been refused to be carried out by revenue authorities, albeit, it has been stated that appeal has been preferred and the same is pending.

3. Apart from aforesaid, there is no other material produced, at this stage, to show that pursuant to the exchange deed, factual possession has taken place. Two courts hitherto have considered that exchange deed is an unregistered document and with reference to the same it is difficult to accept the claim and assertion of ownership while the defendant has disputed the document and its legal execution and unless legality of the same emerges on record there being no *prima facie* evidence available as yet, it is not the case wherein injunction would be due to the petitioner.

4. Having regard to aforesaid, it is not the case, which would call interference with in the exercise of discretionary powers of the courts hitherto. Though learned advocate for the petitioner purports to rely on two citations *viz.*, "*Tukaram Bhau Mane V/s State of Maharashtra*" [LEX (BOM) 1982 9 40] with respect to fraud and "*Bondar Singh V.s Nihal Singh*" [LEX (SC) 2003 3 86] with respect to collateral purpose of the document, looking at that there is no *prima facie* material available to show that exchange of lands has in fact had taken place, impugned decisions cannot be faulted with. The petition does not carry any substance worth consideration under discretionary powers of this court.

5. Writ petition, as such, stands dismissed. It is made clear that decisions hitherto, including this order, are at interlocutory stage and observations therein shall not influence decision in trial on merits of the case.

[SUNIL P. DESHMUKH]
JUDGE

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