

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

904 WRIT PETITION NO.3045 OF 2014

BHANUDAS GANAJI WAHUL
VERSUS
BABASAHEB PARASRAM ZALKE AND OTHERS

...
Advocate for Petitioner : Mr. M.K. Deshpande

...

CORAM : T.V. NALAWADE, J.
DATED : 14/02/2019.

PER COURT :

1. The petition is filed to challenge the order made by the learned Civil Judge, Junior Division, Aurangabad on Exh. 129 filed in RCS No. 183/1992. Heard the learned counsel for petitioner.

2. The suit is filed by present petitioner for relief of injunction to prevent the defendants from alienating the suit property which is the house bearing No. 653 and 11 situated at village Pandharpur. Relief of declaration of sale deed executed by plaintiff in favour of defendant No. 1 as null and void is also claimed. Relief of decree of the possession of the suit property is also claimed. It is the contention of the petitioner, plaintiff that during pendency of this suit, the property which was with defendant Nos. 3 and 4 came to be sold to third party and so,

he wanted to add new purchasers of the property as party defendants, but the Trial Court has rejected that application.

3. This Court has carefully gone through the pleadings of the present petitioner. The pleadings show that apparently the transaction was out and out sell and there was no condition incorporated in the document that the purchaser will reconvene the property and it was a security transaction. The pleading shows that in the past on two occasions, sale deeds were executed in favour of defendant No. 1, the same purchaser, but on some conditions and consideration was law and during period given the defendant No. 1 had reconvened the suit property to the plaintiff. The last transaction involved in the matter was of higher consideration of Rs. 30,000/- though plaintiff has contended that the amount of Rs.15,000/- was given to him by defendant No. 1. In such cases, the burden is always on the plaintiff to prove that it was not out and out sell, but it was security transaction. Further, there is provision of section 52 of Transfer of Property Act making it clear that if any transaction is made which amounts to *lis pendens* transaction, that transaction will not be binding on the parties to the suit. In view of these circumstances, if the plaintiff succeeds in the suit and mainly in

getting the declaration that transaction was of security in nature, then he can get the possession even from the third party in view of the provisions of section 52 of the Transfer of Property Act. Due to all these circumstances and as the burden is on the plaintiff in aforesaid regard, this Court holds that at this stage, it is not desirable to interfere in the matter. The petition stands dismissed. The aforesaid observations are for the purpose of present proceeding only.

[T.V. NALAWADE, J.]

ssc/