

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1615 OF 2019

RAJENDRA ALIAS VISHWANATH KISANRAO GUPTÉ
VERSUS
GANPAT LIMBAJI GUPTÉ AND OTHERS

...
Mr. H.V. Tungar, Advocate for petitioner

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CORAM : SUNIL P. DESHMUKH, J.
DATE : 06-02-2019

ORDER :

1. Heard learned counsel for petitioner.
2. In the suit for specific performance by petitioner, temporary injunction protecting claimed possession of petitioner and from dealing with the property, had been sought. The same has been rejected by trial court and appellate court. The factual situation, as appreciated by appellate court is reflected in paragraph no. 10 of its decision reading, thus,

“ 10. Plaintiff had filed suit for the relief of specific performance, declaration and perpetual injunction. It seems that the plaintiff had come with the case that there is oral agreement of sale of suit property in first week of April 1996 and in support of the case he is taking help of suits between him and his family members. To prove the fact that there is transaction of sale of property, there should be cogent evidence. No such evidence is forthcoming. It is say of the plaintiff that he constructed the house over the suit property. Defendant No.1 is not accepting it. There is no iota of evidence in

the form of document i.e. 7/12 record, sale deed or any other Court document to show that the plaintiff is in possession of the suit property by way of agreement of sale. Admittedly defendant No.1 is owner of suit property and being owner his name is mutated to the record of right as a owner and possessor of the suit property. The allegations in the plaint pertaining to oral agreement of sale of suit property is to be proved by way of oral evidence. At this stage to accept this sale transaction nothing is on record. Admittedly defendant No.1 sold the suit property to defendant No. 2 to 4 by way of registered sale deeds and they are in possession of it on the basis of the sale deeds. To accept the possession of the plaintiff over the suit property as alleged in the plaint the entire oral evidence is required. Nowhere defendant No.1 is accepting that there was any oral transaction to sell the suit property between the plaintiff and defendant No.1 and defendant No.1 acted further by accepting said transaction. Nothing is on record to say that the plaintiff had paid any money to defendant No.1 by way of earnest money or by way of part consideration amount of sale transaction. So at this prima facie stage it is difficult to accept the case of the plaintiff that he is in possession of the suit property and if possession is not protected he will be put to irreparable loss. He had also no evidence to show that defendants are obstructing his possession. When he is not able to prove that he is in possession of the suit property no question arose to obstruct his possession. I have gone through all document on record. There is mention of another suits before Mamlatdar Court etc. and it seems that there are different suits between the parties but it is not stage to consider what is the impact of those suits on this suit. Because all those persons, against whom the suit are filed, are not party to this suit. Merely because plaintiff's brother's wife filed suit for partition of their properties, including the suit property as ancestral property, it cannot become ancestral property. The said fact is to be proved on record. Admittedly no such Court decision is on record. No such judgment is produced on record. So at this stage it is disputed aspect that whether the suit property is sold by defendant No.1 to plaintiff by way of oral agreement of sale, unless this fact is proved, the suit cannot stand before the Court. ”

3. Having regard to aforesaid, though learned counsel for petitioner contends that application could have been considered atleast to the extent of imposing injunction in respect of alienation of property, however, looking at the reasons while in the discretionary powers of two courts, such a request has been

declined, the reasons as one could gather, are borne out from observations in paragraph no. 10 referred above, do not appear to be in any way absurd or can be said to be perverse.

4. In the circumstances, the request under writ petition is difficult to be acceded to. Writ petition is not being entertained and is rejected.

[SUNIL P. DESHMUKH]
JUDGE

arp/