

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

WRIT PETITION NO.11014 OF 2016

Babaji Kashinath Nikam

Through POA Mr. Kailas B. Nikam ... Petitioner

Vs.

Ahilyabai Madhav Mahale and Ors. ... Respondents

.....

Mr. Rameshwar N. Gite for the Petitioner.

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CORAM : M. S. KARNIK, J.

DATE : 29th AUGUST, 2019.

P. C.:

1. Heard learned counsel for the petitioner.
2. The petitioner by this petition filed under Article 227 of the Constitution of India challenges the order passed by the Appellate Court rejecting the Appeal filed by the original defendant.
3. The plaintiffs had filed a suit for declaration and injunction restraining the defendant present petitioner from interfering with their possession over the suit property. The plaintiffs are claiming on the basis of the sale deed dated 13.4.2011. Under the sale deed the plaintiffs claim to be in

possession. The plaintiffs filed application below Exhibit 5 for temporary injunction. The Trial Court allowed the application for temporary injunction. The petitioner approached the Appellate Court. The Appellate Court rejected the Appeal. Learned counsel for the petitioner assailing the order passed by the Appellate Court would submit that the petitioner is in possession. This is on the basis of the agreement of sale made on 2.4.2011. He would further submit that nothing has been produced on record by the plaintiffs to establish their possession.

4. I have gone through the order passed by the Courts below. The petitioner-original defendant is claiming on the basis of unregistered agreement of sale. The plaintiffs on the other hand filed a suit that based on the sale deed executed by the owner in their favour, the plaintiffs claim to be in possession. Even the 7/12 extract and revenue entries are in favour of the plaintiffs.

5. From the record it appears that the petitioner filed Special Civil Suit No.68 of 2011. In the said suit the application

was filed for temporary injunction. The said application came to be rejected. There is thus no material on record to show that the petitioner is in possession, I do not see any reason to interfere with the findings of the Courts below which obviously are prima facie in nature. The Trial Court will not be influenced by any of the observations made in the impugned order while deciding the suit.

6. The Petition therefore stands rejected.

(M. S. KARNIK, J.)