

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

23. WRIT PETITION No. 2190 /2020

Balu s/o Jivan Vaykar

...Petitioner

VERSUS

Santosh S/o Laxminaryan Sarda

...Respondent

Mr. N.P. Bangar, Advocate for petitioner

CORAM : ROHIT B. DEO, J.

DATE : 3rd February, 2020

PER COURT :

1. The petitioner is the plaintiff in Reg. Civil suit No. 328 of 2015 brought for cancellation of sale deed. The respondent is arrayed as defendant in the civil suit.
2. The parties shall be referred to by their statues in the Trial Court.
3. The plaintiff contends that he obtained loan of Rs. 2,00,000/- from the defendant and, as a security, executed sale deed dated 22nd July 2013. The plaintiff further contends that sale deed was executed only as a security document and the plaintiff

continued to remain in possession of the suit property, which is an agricultural field admeasuring 99R. The plaintiff contends that on 30th April 2015 the defendant disclosed intention to alienate the suit property by publishing an advertisement. This constrained the plaintiff to approach the Civil Court.

4. The plaintiff claimed injunction restraining the defendant from disturbing the possession and from creating third party interest in the suit property, which is rejected by the Trial Court. The plaintiff preferred an appeal, which met similar fate.

5. The learned Counsel for the plaintiff submits that in this petition, the relief is restricted to an injunction that third party interest ought not to be created by the defendant. I am not inclined to consider the said prayer for reasons more than one. The defendant is shown to be the owner and in possession in the 7/12 extracts. In any event, any alienation during the pendency of the suit, shall be subject to the doctrine of *lis-pendens*.

6. The learned Counsel for the plaintiff, however, has relied very strongly on a *panchnama* purportedly conducted by the Revenue Authorities under the directions of the Tahsildar, which

according to the *plaintiff*, confirms his possession. The *panchnama* is not given credence by the Authorities below. Both the Authorities have noted that the *panchnama* is not conducted in accordance with Rules 30 and 31 of the Maharashtra Land Revenue Record of Rights and Registers (Preparation and Maintenance) Rules, 1971. The seven days notice was not given. The defendant was not present at the spot. The Appellate Court has noted that only some villagers and relatives of the plaintiff were present. Be that as it may, since the plaintiff contends that he is in possession and is not pressing the relief qua the possession, I do not dilate any further on the aspect of prima facie weight to be given to the *panchnama*, which is not conducted in accordance with the Rules.

7. I do not see any reason to interfere with the concurrent view taken by the Courts below. The petition is dismissed.

(ROHIT B. DEO)
JUDGE