

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

1 CIVIL APPLICATION NO.11192 OF 2016
IN
SA/343/2017

SOW. VIMAL @ VIMALBAI JANARDHAN
BHAVTHANKAR
VERSUS
JANARDHAN PUNJARAM BHAVTHANKAR

...
Mr. A.M.Gholap, Advocate for applicant.
Mr.G.K.(Naik) Thigale, Advocate for Resp.

...
CORAM : V.L. ACHLIYA, J.
DATE : 24/02/2020

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ORAL ORDER:

1. Heard learned counsel for applicant/appellant and respondent.

2. In brief, it is the contention of learned counsel for applicant that the appeal raises substantial questions of law. The trial Court has decreed the suit. Without any perversity, the first appellate Court has reversed the findings on facts recorded by trial Court. The parties are related as husband and wife. Undisputedly, the suit property is purchased by registered sale deed in the name of appellant. The respondent has contracted second marriage and since the year

2007 he is residing separately with his wife. The applicant is the owner and in exclusive possession of suit property. It is submitted that plaintiff has filed suit simplicitor for injunction. The trial Court has dismissed the suit after considering rival pleadings and evidence adduced in the case. No declaration of ownership or any right in the suit property has been claimed by defendant though the plaintiff has claimed that he has purchased the property in the name of defendant. It is submitted that suit simplicitor for injunction is not maintainable in the facts and circumstances of the case. There is no evidence to show that defendant is in possession of suit property and entitled to protection under law.

3. On the other hand, learned counsel for respondent supported the Judgment and decree passed by first appellate Court. It is submitted that though the property purchased in the name of appellant, the plaintiff is in joint possession of suit property along with appellant and entitled to limited protection that he shall not be dispossessed without following due process of law. It is further

submitted that the applicant is trying to sell the property.

4. On instructions, learned counsel for applicant makes statement that applicant has no intention to create third party interest in respect of suit property.

5. By the order separately passed in the matter, the appeal has been admitted on the satisfaction that appeal raises substantial questions of law. It is admitted position that applicant is the registered owner of suit property. The suit filed by plaintiff is a suit simplicitor for injunction. Although the respondent/plaintiff claimed that the suit property purchased by him in the name of applicant, no relief in the nature of declaration has been claimed in the suit. The nature of suit property is an open plot with one room constructed with RCC structure and shed attached to the same. The trial Court has dismissed the Suit. The appellate Court has reversed the Judgment and decree passed by trial court. In view of admission of appeal, the impugned Judgment and decree passed by trial Court deserves to be stayed. Accordingly, the application is

allowed in terms of prayer clause 'B' subject to condition that applicant shall file undertaking within two weeks from the date of this order to the effect that pending disposal of appeal the applicant/appellant shall not create third party interest in respect of suit property.

6. Civil application disposed of in above terms.

[V.L.ACHLIYA]
JUDGE

KNP