

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

WRIT PETITION NO. 8936 OF 2018

Mr.Dattatray Kashinath Tambe

...Petitioner

vs.

Mr.Shrikrushna Naggapa Mali

...Respondent

Mr.Ashok B. Tajane for Petitioner.

MR.I.M. Khairdi for Respondent.

CORAM : S.C. GUPTE, J.

DATE : 25 SEPTEMBER 2020

P.C. :

This writ petition challenges an order passed by 5th Joint Civil Judge, Junior Division, Solapur below Exhibit-5 in Regular Civil Suit No.628/2017 (order dated 19 April 2018) and the judgment and order of the lower appellate court, District Judge-9 Solapur, in Misc.Civil Appeal No.68/2018 filed from that order, by which the order of the trial court below Exhibit-5 was confirmed.

2 The suit, in which the impugned orders are passed, has been filed by the Respondent herein on the basis of a registered sale deed executed by the Petitioner in his favour. The suit seeks a perpetual injunction against the Petitioner from disturbing peaceful possession of the Respondent. In that suit, on Exhibit-5, interim injunction in terms of the perpetual injunction sought in the suit has been ordered by the trial court and that order, as noted above, has been confirmed by the District Court. So far as the Petitioner herein is concerned, he has filed his own suit alleging *inter alia* that the transaction between the parties was that of a

loan and not a sale; there was an agreement for re-conveyance of the property in favour of the Petitioner/plaintiff after repayment of the loan. The suit was for specific performance of that agreement. The immediate grievance of the Petitioner in the present writ petition is that the Respondent has given a public notice (notice dated 6 August 2020) proposing to sell the suit property. The Petitioner seeks to restrain the Respondent from going ahead with this sale.

3 It is difficult to see how this relief could be claimed by the Petitioner in the Respondent's suit based on a sale deed in favour of the latter. Relief, if any and at all, can only be claimed by the Petitioner in his own suit, which seeks specific performance of an alleged agreement for re-conveyance of the suit property in favour of the Petitioner. The merits of the Petitioner's claim in respect of the suit property can only be tested in his suit praying for re-conveyance. Upon this being pointed out, Mr.Tajane, learned Counsel appearing for the Petitioner, seeks leave to withdraw the writ petition with liberty to apply for appropriate interim relief before the trial court in his client's suit. Learned Counsel submits that both suits, though in the same court, are before two different judges and it is in the interest of justice to club them so as to be heard together.

4 Mr.Khairdi, learned Counsel for the Respondent, has no objection if the two suits are clubbed and heard by one court. Learned Counsel submits that he has substantial grounds to oppose the Petitioner's application for restraining the Respondent from selling the suit property. Learned Counsel submits that he will urge these before the trial court as and when the Petitioner applies for interim relief in respect of the sale proposed by the Respondent.

5 In the premises, the following order is passed:

(I) The petition is dismissed as withdrawn with liberty to the Petitioner to apply for interim relief, being the subject matter of the present petition, before the trial court in his own suit, being Special Civil Suit No.257/2017.

(II) Special Civil Suit No.257/2017 shall be clubbed with Regular Civil Suit No.628/2017 and shall be heard by the court hearing RCS No.628/2017.

(III) Both suits shall be heard together and disposed of by the trial court without being influenced by the order passed below Exhibit-5 in RCS No.628/2017.

(IV) All rights and contentions of the parties on merits are kept open, to be agitated before the trial court.

6 This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(S.C. GUPTE, J.)