

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

WRIT PETITION NO.9653 OF 2021

**MANIK RAMRAO SHELKE
VERSUS
BALBHIM KARBHARI SALUNKE AND OTHERS**

...
Advocate for Petitioner : Mr. Joshi Sachin G.

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CORAM : MANGESH S. PATIL, J.

DATE : 06.09.2021

PER COURT :

Heard the learned advocate Mr. Joshi for the petitioner.

2. The petitioner who is the original defendant is impugning the consistent orders of the two courts below granting/confirming temporary injunction in favour of the respondents plaintiffs in a suit for declaration of they being the owner of the suit property and perpetual injunction restraining the petitioners from obstructing their possession.

3. The respondents aver that they had borrowed Rs.1000/- from the petitioner and only by way of a security nominal sale deed was executed in his favour, however, they continued to enjoy the possession. They further aver that just before filing of the Suit the petitioner attempted to get his name mutated to the suit property on the basis of the sale deed and hence they have filed the Suit and claim injunction.

4. The learned advocate for the petitioner relying upon the catena of judgments would submit that mere entries in the Revenue Record do not confer any right or title. He would further submit that the respondents are not taking exception to the sale deed in as much as no declaration to that

effect is being claimed. The learned advocate would further submit that the attesting witnesses on the sale deed Sundar Chandrabhan Chavan and Maruti Balabhim Chavan have both tendered affidavits which are filed along with the Petition (Exhibit - I collectively) in support of the petitioner saying that it was an out and out sale and even the possession was delivered under the sale deed. The learned advocate would submit that in fact the respondents had fraudulently obtained an affidavit of witness Sundar Chandrabhan Chavan in support of their assertion and in the present affidavit he has flatly denied about having sworn the affidavit of his free will. The learned advocate, therefore, would submit that the temporary injunction has been obtained by practising fraud and it has been overlooked by the Appellate Court. The observations and conclusions are, therefore, perverse, arbitrary and capricious.

5. I have carefully considered the submissions and the papers.

6. Needless to state that the Writ Jurisdiction of this Court is being invoked against the consistent decisions of the two courts below and there are inherent limitations in exercising such jurisdiction.

7. Admittedly, the plaintiff allegedly purchase the suit property under a sale deed dated 27.01.1975. Since then at no point of time any attempt was made by him for getting his name mutated in the revenue record of the suit property. It is only just before filing of the Suit in the year 2020 that he made such an attempt.

8. True it is that the revenue entries are meant for fiscal purposes and cannot create or destroy title to the properties. However, it is equally trite that long standing revenue entries do have a presumptive value. When, admittedly, in spite of execution of the sale deed in the year 1975 the name of the respondents continued in the Revenue Record for almost 45 years, no exception can be taken to the observations and conclusion of the two courts

below holding that such long standing entries in the revenue record carry presumptive value.

9. It is a matter of record that the respondents are not specifically seeking any declaration regarding the sale deed being void or invalid. However we are at the stage of grant or otherwise of temporary injunction for protection of possession. The aforementioned facts and circumstances are sufficient to *prima facie* demonstrate that the respondents are in possession of the suit property and would suffer irreparable loss if temporary injunction is refused. Consequently even the balance of convenience is in their favour.

10. So far as the affidavits of the attesting witnesses filed in this Writ Petition are concerned, one cannot comprehend any reason as to why the petitioner has chosen this proceeding to be initiated to come out with such affidavits. No reason is forth coming as to why he could not file such affidavits of the witnesses before the lower courts.

11. Again in view of the inconsistent stand of witness Sundar Chandrabhan Chavan, for the very reason of the change in the stance, cannot be relied upon at this stage.

12. Taking into account the over all conspectus of the matter, I find no perversity, arbitrariness or capriciousness in the impugned orders of the two courts below.

13. The Writ Petition is dismissed *in limine*.

(MANGESH S. PATIL, J.)