

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

WRIT PETITION NO.11786 OF 2021

**ASARAM PATILSAHEB GHODKE
VERSUS
NILKANTH BALIRAM GHODKE AND OTHERS**

...
Advocate for Petitioner : A.S.Shelke h/f Jadhav Ganesh R.

WITH

WRIT PETITION NO.11914 OF 2021

**ASARAM PATILSAHEB GHODKE AND ANOTHER
VERSUS
NILKANTH BALIRAM GHODKE**

...
Advocate for Petitioners : A.S.Shelke h/f Jadhav Ganesh R.

...
**CORAM: MANGESH S PATIL,J.
DATE : 26.10.2021**

P.C.:

Heard learned advocate Mr.A.S.Shelke holding for Advocate Mr.Ganesh R.Jadhav for the petitioners in both these petitions.

2] The petitioners are impugning the consistent conclusions of the two Courts below holding the respondent no.1 who is the original plaintiff to be entitled to temporary injunction restraining the petitioners from obstructing her

possession in the suit property as also restraining them from creating any third party interest in the suit property during pendency of the suit, as well as rejection of the application filed by the petitioner Asaram who is the original defendant no.1 (Exh.67) in his counter claim restraining the respondent-plaintiff from obstructing his possession.

3] For the sake of convenience the parties are referred to by their designation in the suit. The learned advocate Mr.Shelke submits that the plaintiff had filed suit for injunction based on title derived from the defendant no.2 on the basis of a sale deed. In turn the defendant no.2 had purchased the self same property from the defendant no.1 under a registered sale deed dated 26/5/1997. It was specifically recited in that sale deed that it would take effect on payment of the remainder consideration of Rs.40,000/-. It was specifically mentioned that the balance amount of Rs.40,000/- was to be paid within 4 months, on failure to pay the sale deed was to become void. Relying upon the decision in the case of Kaliaperumal V/s Rajagopal and another; 2009(4) Mh.L.J. 706, he would further submit that intention of the parties can easily be gathered from the recitals of the sale deed. The sale deed was to take effect only after payment of the balance amount of Rs.40,000/-. It was never paid.

4] Mr.Shelke further submits that though it is a matter of record that the defendant no.1 never made any attempt to

either seek re-conveyance or to demand balance amount of consideration, he did object to the mutation entry carried out pursuant to such sale deed. The learned advocate, therefore, submits that in view of such state of affairs, there was no reason and occasion for the two Courts below to come to a conclusion about the possession having been delivered under the sale deed. Under a *bona fide* belief that no re-conveyance would be necessary, perhaps, the defendant no.1 never made any attempt to seek re-conveyance. The observations and the conclusions of the two Courts below are perverse and arbitrary. They have illegally refused to follow the decision in the case of Kaliaperumal (supra).

5] I have carefully considered the submissions and the papers, as also the decision in the case of Kaliaperumal (supra). Before advertng to the facts it is suffice to bear in mind that the petitioners are seeking interference of this Court under Article 227 of the Constitution of India against consistent findings and orders of the Courts below which are the fact finding courts. Scope of the present Writ Petition is, indeed, very limited.

6] The defendant no.1, as has been mentioned earlier specifically admits execution of the sale deed in favour of the defendant no.2 on 26/5/1997. The sale deed specifically mentions about delivery of possession as well. True it is, as has been laid down in the case of Kaliaperumal(supra),

intention to transfer has to be gathered from the recitals in the sale deed. The contents of the sale deed demonstrate that the balance amount of consideration was to be paid within 4 months and on such failure the sale was to become void. However, it is equally pertinent to note that by virtue of the provisions of Section 54 of the Transfer of Property Act, as laid down in the case of Kaliaperumal(supra) the transfer of property would take effect no sooner the sale deed is executed and registered in accordance with relevant law.

7] If such is the case, defendant no.1 would be entitled to lead evidence in rebuttal of such registered document in view of provision of Section 92 of the Indian Evidence Act. However at the stage of deciding application for temporary injunction under Order XXXIX of the C.P.C. the factum of execution of registered sale deed is sufficient for the Courts below to come to a conclusion that *prima facie* the title did pass on to defendant no.2 who in turn has transferred it to the plaintiff. It is pursuant to such a conclusion drawn by the two Courts below that they have found the plaintiff entitled to a temporary injunction restraining the defendant no.1 from obstructing plaintiffs possession over the suit property and further restraining him from creating any third party interest.

8] Similarly no fault can be found with the conclusion of the two Courts below that the defendant no.1 is not entitled to any temporary injunction as claimed by him by filing

application (Exh.67). By no stretch of imagination the conclusions drawn by the two Courts below can be said to be either perverse, arbitrary or capricious so that this Court can interfere in exercise of the writ jurisdiction.

9] The Writ Petitions are dismissed in limine.

[MANGESH S. PATIL,J.]

umg/