

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3524 OF 2021

Saudagar Naganath Kokate Petitioner
Vs.
Arun Bhagvan Nalavade & Ors. Respondents

Ms. Rekha Musale for Petitioner

Coram : NITIN W. SAMBRE, J.

Date : 30TH JULY, 2021

P.C.:

1. In a Special Civil Suit No. 550 of 2017, which is for declaration and injunction, an application Exhibit 5 came to be allowed against the Petitioner/Defendant on 7th December, 2017, thereby restraining him from disturbing possession of the Plaintiff over the suit property, which order was confirmed by the learned District Judge 1, Barshi vide order impugned dated 24th March, 2021. As such, this petition.

2. The contention of learned counsel appearing for the Petitioner are, the suit property was purchased vide registered sale-

deed thereby transferring title and possession of undivided share by the Defendant Nos.2 to 11 to the Plaintiff/Petitioner. So as to substantiate the said claim, reliance is placed on the entries in 7/12 extract. As such according to the Petitioner if the property to the extent of 1 Hectare 62 Are out of 1 Hectare 97 Are from Gat No. 140 i.e. the suit property was purchased vide registered sale-deed dated 17th July, 2017, both the Courts below have committed an error in granting/confirming the injunction. According to him the reasons recorded speaks of possession of the Petitioner.

3. I have considered said submissions in the light of the rival pleadings of the parties before the Court below and the observations made.

4. The execution of the registered sale-deed in favour of the Petitioner-Defendant is not disputed by the Plaintiff, however, the quantum of possession having been received pursuant to such sale-deed is strongly contested. Though the Petitioner has relied on revenue entries and the registered sale deed executed by Defendant Nos. 2 to

11, the revenue entries (7/12 extract) cannot be formed to be basis for inferring possession of the Petitioner over the suit property. The Petitioners have claimed possession over undivided share based on oral partition of the year 2007, however such oral partition cannot be inferred to have acted upon by Defendant Nos. 2 to 11 and the Plaintiff/ Respondent No. 1, as same was not carried out by meets and bounds.

5. The Plaintiff/ injunction holder is a co-sharer in the property, which fact is not disputed.

6. For the reasons stated hereinabove against the concurrent findings, no case for interference in extra ordinary jurisdiction is made out. The Petition as such fails, stands dismissed.

7. Liberty to move for expeditious disposal of the suit.

(NITIN W. SAMBRE, J.)