

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

WRIT PETITION NO. 5063 OF 2022

**MUKUND BALVIRSING THAKUR AND OTHERS
VERSUS
NAVNATH VISHWANATH DARKUNDE AND OTHERS**

. . .
Advocate for Petitioners : Mr. Vijay Bhalerao Patil
. . .

CORAM : MANGESH S. PATIL, J.

DATED : 29 JUNE 2022

PER COURT :

The petitioners are the original plaintiffs, who not successful in obtaining a temporary injunction, restraining the respondents/defendants from alienating or creating third party interest in the suit plots.

2. I have heard the learned advocate Mr. Patil for the petitioners.

3. Learned advocate Mr. Patil submits that the petitioners have filed a suit with a specific stand that the suit plots were sold to the respondent nos. 1 to 3, but those sales were only in the nature of conditional transfers. By contemporaneous agreement the respondent nos.1 to 3 had agreed to re-convey the plots. In breach of such agreement, they have sold some of the suit plots to the rest of the respondents and the suit has been filed for a declaration that the sale deeds in respect of the suit plots be declared as null and void and

not binding on them. Even perpetual injunction has been claimed against the respondent nos. 4 to 7 restraining them from alienating the further transfer of the suit plots. An innocuous prayer, in the peculiar facts and circumstances has been rejected by the trial court and even the lower appellate court has refused to consider the matter on merits addressing itself to the aforementioned facts and circumstances.

4. I have carefully considered the submissions and perused the reasoning given by the courts below. As has been rightly pointed out by the learned District Judge, there are inherent limitations in this powers to substitute his discretion in the place of the discretion refused to be exercised by the trial court.

5. Going by the reasoning given by the trial court, which is subscribed by the learned District Judge, the petitioner's interest is certainly protected by virtue of section 52 of the Transfer of Property Act, 1992 and there is no other reason to grant any injunction over and above such plot.

6. It has also been mentioned that the suit plots were transferred initially to the defendants no. 1 to 3 and the latter have transferred those to the respondents no. 4 to 7 even before filing the suit.

7. Admittedly, there is no independent jural relationship between the petitioners and the respondents no. 4 to 7. The latter have derived the title under separate sale deeds.

8. It is to be borne in mind that in view of the provision of section 52 of the Transfer of Property Act, 1992, since the suit plots situate at Khadki Gram Panchayat, Jamner Taluka, District Jalgaon, which is a part of the erstwhile State of Bombay, in order to seek protection under that provision, the plaint has to be registered under the Registration Act, 1908.

9. In view of the reasoning given by the trial courts below, I had inquired with the learned advocate for the petitioners as to why they are not taking steps to register the plaint. The learned advocate is unable to respond.

10. Be that as it may, the protection of section 52 of the Transfer of Property Act, 1992 can certainly be had provided the petitioners take appropriate steps for registration of the plaint.

11. The orders of the courts below refusing to grant injunction in the peculiar facts and circumstances cannot be said to be either perverse, arbitrary or capricious, so that this court can substitute it by resorting to scrutiny of the facts independently.

12. The writ petition is dismissed.

(MANGESH S. PATIL, J.)

Tandale/-