

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

WRIT PETITION NO.4001 OF 2022

Shri. Malojiraje Ranojiraje Ghorpade ..Petitioner

Versus

Shri. Parashram Satappa Taware ..Respondent

Mr. Anand S. Patil, for the Petitioner.

Mr. Chetan G. Patil, for the Respondent.

CORAM : NITIN W. SAMBRE, J.

DATE : 5th APRIL, 2022

PC.

1. Heard Mr. Anand Patil, learned counsel for the petitioner/defendant. Special Civil Suit No.209 of 2021 is initiated by the respondent against the petitioner for specific performance or in alternate return of the earnest amount. The suit is based on an agreement of mortgage by conditional sale dated 24th December, 2010.

2. Both the Courts below have *prima facie* held that the respondent is in possession of the suit property based on recitals in the aforesaid agreement, so also the other documentary evidence. As such, proceeded to grant temporary injunction.

3. While questioning the same, the submissions are, the revenue record in fact stood in the name of the present petitioner. It

is further claimed that after the mortgage amount was returned in 2016, petitioner has received possession of the suit property. According to him, the document speaks of possession of the respondent till 2016 and as such possession was restored to the petitioner which fact the Court below has ignored. He would further urge that the alleged theory of receipt of cash amount and supply of material is concocted. The Court below ought not to have looked into the same.

4. Counsel for the respondent would support the orders impugned based on recitals of the mortgage-deed.

5. I have appreciated the submissions.

6. Fact remains that the revenue record till date is maintained in favour of the petitioner in spite of the fact that there exist of document of mortgage by Conditional Sale.

7. The aforesaid document viz. mortgage-deed by Conditional Sale is not disputed by the petitioner. As such, if this Court appreciates recitals wherein, it is categorically provided handing over possession by the petitioner to the respondent/plaintiff. The possession was to be received by the petitioner in writing which document is absent in the present case.

8. Apart from above, the claim of the petitioner that he has

returned the mortgage money is not *prima facie* established.

9. In the aforesaid background, having regard to the concurrent findings of the material on record, particularly, recitals of the document viz. mortgage by conditional sale dated 24th December, 2010, in my opinion, no case for interference in the order impugned is made out.

10. The petition as such fails, dismissed.

[NITIN W. SAMBRE, J.]