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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 1602 OF 2022

MR. SHIVAJI VIJAYSINHA MOHITE

....PETITIONER

V/s.

**MR. AGATRAO KESHAVRAO PAWAR
AND ORS**

.....RESPONDENTS

Mr. Vishwanath S. Talkute for the Petitioner
Mr. B. A. Lawate for Respondents

CORAM : NITIN W. SAMBRE, J.

DATE: FEBRUARY 18, 2022.

P.C.:

- 1) Respondent-Plaintiff initiated a Suit being R.C.S. No. 8/2016 questioning the sale deed executed by Defendant nos. 1 & 2 in favour of Defendant no. 3, Petitioner.
- 2) Prayer for grant of temporary injunction was rejected vide order dated 15/02/2017. Said order was reversed by the District Judge vide order passed on 20/01/2022 which is impugned in the present Petition.

- 3) I have perused the order impugned.
- 4) Apart from the fact that Petitioner is claiming his possession by virtue of sale deed executed by Defendant nos. 1 & 2 in his favour, recitals therein does not, in categorical or clear terms specify about handing over of the possession. Rather recitals are too vague to infer that the Petitioner was put in possession of the Suit property by Defendant nos. 1 & 2 under the sale deed which is questioned in the Suit.
- 5) The aforesaid issue has prevailed before the lower Appellate Court in granting injunction.
- 6) Though learned counsel for the Petitioner has tried to claim that earlier Suit preferred by the Respondent-Plaintiff was withdrawn unconditionally and as such there is bar under Order II Rule 2 of Code of Civil Procedure, 1908 on the maintainability of the present Suit, the fact remains that when earlier suit was withdrawn, sale deed executed in favour of the Petitioner was not in existence.
- 7) In that view of the matter, above contention will be of hardly any significance. Apart from above, it is required to be noted that in the matter of grant of temporary injunction, particularly as regards

protection of possession, it is necessary that a party must prima facie demonstrate their lawful possession over the Suit property which the Respondent-Plaintiff has very much established before the Court below.

8) In the aforesaid background, reliance placed by the counsel for the Petitioner on the recitals in the impugned sale deed will be of no significance. That being so, no case for interference in extraordinary jurisdiction is made out. Petition fails, stands dismissed.

[NITIN W. SAMBRE, J.]