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

WRIT PETITION 69 OF 2022

Shamina Amin Mulani

... Petitioner

Versus

Rahim Saifuddin Jaffar

... Respondent

Mr. Harshad Sathe for the Petitioner.

None for the Respondent.

CORAM: ROHIT B. DEO, J.

DATE : 13th JUNE, 2022

P.C. :-

. The petitioner is the plaintiff who has instituted Special Civil Suit 898 of 2011 seeking decree of specific performance.

2. The plaintiff preferred an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (for short 'Code') seeking temporary junction restraining the defendant from disturbing the possession of the plaintiff.

3. The learned Trial Judge was pleased to reject the application under Order XXXIX Rules 1 and 2 of the Code, by reasoned order dated 28th August, 2015.

4. Dissatisfied, the plaintiff preferred Misc. Civil Appeal 406 of 2015, which is dismissed by the Trial Court by judgment dated 12th

December, 2018.

5. Aggrieved the plaintiff is invoking writ and supervisory jurisdiction.

6. The plaintiff is asserting his claim to specific performance on the basis of a purported oral agreement. Both the Courts below have concurrently found that plaintiff has not made out a *prima-facie* case. I have perused the orders of the Courts below. I am not inclined to re-appreciate the material on record as if acting as an Appellate Court. In writ jurisdiction, such a course is clearly impermissible. That apart, the apprehension of the plaintiff that there would be dispossession, appears to be misconceived, since the plaintiff's own case is that the suit property is in possession of his sister-in-law and that the defendant is prosecuting the eviction suit/s against her.

7. If the sister-in-law of the plaintiff is in possession and she is facing eviction suit/s, it would be for her to approach the appropriate Court seeking appropriate injunctive relief, if so advised. In the present case, all that the plaintiff is seeking is decree of specific performance. The temporary injunction claimed is restricted to possession and creation of third party interest. Insofar as possession is concerned, as noted supra, the plaintiff's sister-in-law is in possession. Considering the observations of the Courts below, I am not inclined to grant temporary injunction restraining alienation particularly since if there is alienation during the pendency of the litigation, the same shall obviously be subject to the result of the litigation.

8. Subject to the observations supra, petition is disposed of.

[ROHIT B. DEO, J.]