

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

WRIT PETITION NO. 5282 OF 2022

Mr. Pardeshi Shivshankar Gupta ..Petitioner
Versus
Mr. Raghunath Shivshankar Gupta and Anr. ..Respondents

Mr. Ajay Panicker i/by Ajay Law Associates, for the Petitioner.
Mr. P. B. Shah i/by Kayval P. Shah, for the Respondents.

CORAM : NITIN W. SAMBRE, J.

DATE : 29th APRIL, 2022

PC.

1. Heard respective counsels.
2. The petitioner/plaintiff initiated suit for declaration of ownership and injunction thereby restraining respondent, his real brother from interfering with his possession over the suit property. The petitioner claims title to the suit property based on registered agreement of sale dated 1st October, 2015.
3. In the said suit, the petitioner took out an application for grant of temporary injunction which was allowed by the learned Trial Court vide order dated 8th February, 2022. In an appeal under the provisions of Order XLIII Rule 1 of the CPC preferred by the respondent/defendant the said order came to be reversed vide order dated 16th April, 2022 passed by the learned District Judge-3, Vasai.

As such, this petition.

4. Counsel for the petitioner would urge that the title to the property in question stood bestowed in the petitioner vide registered agreement dated 1st October, 2015. He would invite attention of this Court to a document executed and registered to that effect after receiving consideration of Rs.1,85,000/-. According to him, recital No.8 in the said agreement of sale speaks of handing over/receipt of lawful possession by the petitioner from the developer and as such he would urge that the Appellate Court erred in recording a finding that the petitioner is not in settled possession of the suit property. He would further urge that the property has come to his share after the death of his father and there are certain independent properties which are in possession of the respondent/brother. He would urge that the Court is required to appreciate the factum of possession on the date of deciding the application for grant of temporary injunction. As such, he would urge that the order of Appellate Court needs interference.

5. Mr. P. B. Shah, counsel appearing for the respondents would support the order passed by the learned District Judge, as according to him, the order of the Trial Court was cryptic and does not reflect any consideration. He would further urge that the Appellate Court was justified in taking into account agreement of sale dated 4th February, 1986 which is more than 30 years old. As such, he has sought dismissal of the petition.

6. Considered rival submissions.

7. The very same developer who has executed registered agreement in favour of the petitioner on 1st October, 2015 has executed title related document on 4th February, 1986 in favour of the father of the plaintiff and defendant. The said agreement of 1986 in categorical terms speaks of possession being handed over to the father of the petitioner. It is very difficult to believe the case of the petitioner that by virtue of such agreement, father of the petitioner remained in possession of the suit property based on 1986 agreement, was not within his knowledge and as such he has got the agreement dated 1st October, 2015 executed in his favour.

8. After the death of father of the petitioner, parties to the suit stood became coparceners/L.Rs. as he has expired intestate. All these issues are taken into account by the Appellate Court while dealing with the claim for grant of injunction.

9. Rightly so pointed out by Mr. P. B. Shah, counsel for the respondents, first Appellate Court while dealing with grant of prayer by a cryptic order allowed the application and granted injunction by relying on registered agreement dated 1st October, 2015. However the effect of thirty years old document viz. agreement of sale dated 4th February, 1986 (may be an unregistered one) is not looked into. That being so, the learned District Judge was justified in reversing the order of granting temporary injunction. In the aforesaid

background, no case for interference in the extraordinary jurisdiction of this Court is made out.

10. The petition as such fails, dismissed.

11. Counsel for the petitioner submits that petitioner intend to test legality of this order before the Apex Court.

12. In view of statement made which is accepted, the protection granted by the District Judge is continued for a period of three weeks from today.

[NITIN W. SAMBRE, J.]