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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3806 OF 2019**

Bhaskar Magan Nalwade and Ors. Petitioners.
V/s
Anil Magan Nalwade and Anr. Respondents.

Mr. Nilesh Wable i/b Abhay A. Jadhav for the Petitioners.
Mr. Prasad P. Kulkarni for Respondent Nos. 1 and 2.

CORAM: NITIN W. SAMBRE, J.

DATE: MAY 02, 2022

P.C.:-

1] Respondents/Plaintiffs filed Regular Civil Suit No.68 of 2016 for partition, claiming 1/4th share in the suit property, questioning Sale Deed dated 29/07/2015 executed by Defendant No.1 in favour of Defendant Nos. 3 and 4. Plaintiffs' prayer for grant of temporary injunction i.e. not to disturb possession came to be rejected. However Appeal being Misc.Civil Appeal No.29 of 2017, came to be allowed vide order dated 03/07/2018, whereby Petitioners who are Defendant Nos. 2 to 4 are temporarily restrained from causing obstruction in joint possession of the Plaintiffs and Defendant Nos. 1 and 2 over the suit property.

2] Contentions of the Counsel for the Petitioners are, after registered Sale Deed was executed which is a subject matter of challenge in the suit, not only possession follows the said Sale Deed in favour of the Petitioners but also revenue entries are recorded to that effect. Support is drawn from the revenue record of the year 2017. It is further claimed that while granting temporary injunction, Appellate Court committed an error, thereby recording a finding that parties are in joint possession of the property in the absence of any material to that effect.

3] Counsel for Respondent Nos. 1 and 2 would support the order impugned. According to him, there is presumption in favour of the Respondents/Plaintiffs of existence of joint family. He would further claim that fact about suit property was never partitioned has prevailed before the Appellate Court in granting temporary injunction as it has to be presumed that in the absence of partition, parties to the suit are in joint possession. Drawing support from the judgment of the Apex Court in the matter of *Ramdas vs. Sitabai and Ors* reported in **AIR**

2009 SC 2735, para 15, it is claimed that status of the property is undivided one and interest of each of the members of the joint family is required to be appreciated.

4] Considered submissions.

5] It appears that after registered Sale Deed was executed by Defendant No.1 in favour of Defendant Nos. 3 and 4, same appears to have been acted upon and revenue entries to that effect were effected. In view of registered Sale Deed executed by Defendant No.1 who happens to be father of both the Plaintiffs, it was for the Respondents while seeking temporary injunction to demonstrate that they were in joint possession of the suit property. But for revenue entries in 7 X 12 Extract prior to 2015, there is hardly any material placed on record to infer joint possession of Respondents/Plaintiffs over the suit property. In this backdrop, since the Sale Deed executed by Defendant No.1 in favour of Defendant Nos. 3 and 4 in respect of the suit property was acted upon, name of Defendant No.1 stood deleted from the revenue record which entry is not questioned till this date by the Respondents/

Plaintiffs and as such Respondents/Plaintiffs have accepted the said position on record. Merely because there is presumption as to jointness of family that by itself will not lead this Court to infer that Respondents/Plaintiffs are in settled possession of the suit property being members of joint family.

6] In that view of the matter, in my opinion, Court below committed an error in granting injunction without any basis. That being so order dated 03/07/2018 is hereby quashed and set aside.

7] Petition stands allowed in the aforesaid terms.

(NITIN W. SAMBRE, J.)