

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

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WRIT PETITION NO.642 OF 2022

Shri. Harshad Amrat Patel

..Petitioner

Versus

M/s. Vitta Mazda Limited and Ors.

..Respondents

Mr. Rameshwar N. Gite, for the Petitioner.

Mr. Kishor S. Patil a/w Pratik Rahade, for Respondent Nos.3 to 5.

CORAM : NITIN W. SAMBRE, J.

DATE : 27th JANUARY, 2022

PC.

1. Heard Mr. Rameshwar Gite, learned counsel for the petitioner/plaintiff in Regular Civil Suit No.20/2019 pending on the file of Court of Civil Judge Junior Division, Daman, seeking decree for permanent injunction against defendant Nos.3, 4 and 5 in the matter of possession over the suit property.

2. The suit claim is based on unregistered agreement of sale dated 7th February, 1993. According to Mr. Rameshwar Gite, learned counsel for the petitioner, the witness to the said agreement has sworn an affidavit dated 22nd August, 2019 stating that after receiving part consideration, respondents have put the petitioner in possession of the suit property. Apart from above, according to Mr. Rameshwar Gite, considering the existence of the agreement of sale, by parting of substantial amount i.e. Rs.11,33,280/- way back in

1993 the Court must infer that petitioner is in a settled possession. He would further claim that even if there are proceedings in the form of company litigation and the respondents to the winding up proceedings claimed to be in possession of the property, same has to be read in favour of the petitioner that the possession was to be handed over in accordance with law. He claims that unless the petitioner is dispossessed, the respondents cannot be put in lawful possession of the suit property.

3. While countering the aforesaid submissions, Mr. Kishor Patil, learned counsel appearing for respondent Nos.3 to 5 would support the order impugned and sought dismissal.

4. Considered submissions.

5. From the recitals of the agreement of sale dated 7th February, 1993, it cannot be inferred that the petitioner was put in possession of the suit property. This Court apart from above, has not noticed revenue entries/document but for affidavit of one of the witnesses alleging that the petitioner is in possession of the suit property. Such a bare statement cannot be accepted, unless there is corroborating material is available on record.

6. Apart from above, this Court must be sensitive to the fact that in winding up proceedings the Hon'ble Apex Court in Special Leave to Appeal (C) Nos.34782-34783/2012 gave directions

to the Official Liquidator to sell approximately 92,008.87 sq.mtrs. of land out of Survey No.78 on 'as is where is basis'. The possession receipt issued by the Official Liquidator in favour of M/s. Shiv Pooja Developers is sufficient enough to hand over the possession to the respondents over the suit property.

7. In view of above and having regard to the concurrent findings recorded by both the Courts below, no case for interference in the extraordinary jurisdiction of this Court is made out.

8. The petition as such fails, stands dismissed.

[NITIN W. SAMBRE, J.]