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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11586 OF 2019**

Abhijeet Uttareshwar Todkar Petitioner.
V/s
Rafik Najuddin Bagwan and Ors. Respondents.

Mr. Shriram S. Kulkarni for the Petitioner.
Mr. Surel S. Shah for Respondent Nos. 1 to 3.

CORAM: NITIN W. SAMBRE, J.

DATE: MARCH 30, 2022

P.C.:-

1] Based on an unregistered agreement of sale dated 23rd October, 2017 in a suit for specific performance, prayer of the Petitioner for grant of temporary injunction thereby protecting his possession came to be allowed which is reversed vide impugned order passed by the lower Appellate Court. As such, this Petition.

2] Heard respective Counsels at length.

3] Document dated 23rd October, 2017, an unregistered agreement of sale, is already impounded, and valuation of the claim based on

recitals therein is underway. But for recitals, there is hardly any evidence to infer settled possession of the Petitioner/Plaintiff over the suit property. Photographs, affidavit in support thereof and recitals in the agreement of sale will be of hardly any significance, particularly when Respondents have already produced 7 X 12 extract i.e. revenue record. Fact that they have title to the suit property and possession can be inferred from the agreement of sale dated 23rd October, 2017. That being so, lower Appellate Court was justified in rejecting the prayer for temporary injunction, thereby restraining Respondents/Defendants from interfering with possession of the Petitioner/Plaintiff over the suit property.

4] However, whether agreement of sale dated 23rd October, 2017 is in the form of security towards money transaction or a document not to be acted upon will be an issue which can be gone into at the stage of deciding of the suit claim. In the aforesaid background, since the execution of the agreement is not in dispute as the Respondents have come out with stand that same is not to be acted upon in performance of execution of sale, but was towards security, Respondents herein are restrained from creating any third party interest in the suit property or

alienating the same during pendency of the suit. Improvements to the suit property, if any, shall be to the benefit of the Petitioner, as in case if the suit is decreed, he will get a developed property at the cost of the Respondents

5] That being so, Petition stands partly allowed in the above terms.

6] In response to court's query, Mr. Shah learned Counsel for the Respondents assures that affidavit not to create third party interest in the suit property shall be tendered before the Trial Court within a period of four weeks from today.

(NITIN W. SAMBRE, J.)