

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

WRIT PETITION NO.12234 OF 2015

Ramesh Shivram Patil and Anr.

..Petitioners

Versus

Kallabai Yallappa Kamble and Ors.

..Respondents

Mr. N. J. Patil i/by Amey N. Patil, for the Petitioners.

Mr. Sandip S. Koregave, for the Respondent No.6.

CORAM : NITIN W. SAMBRE, J.

DATE : 25th FEBRUARY, 2022

PC.

1. Based on an agreement of sale dated 17th December, 2014 in favour of the petitioners in a suit for specific performance and cancellation of sale-deed in favour of defendant No.6 by defendant Nos.1 to 5 and permanent injunction, Trial Court granted temporary injunction against the respondents which is vacated vide impugned order dated 21st October, 2015. As such, this petition.

2. Counsel for the petitioners so as to establish possession of the petitioners over the suit property would rely on the admission to that effect given by the title holder of the suit property in their written statement. Apart from above, he has relied on the recitals of the agreement of sale so as to claim that the possession was received by the petitioners from defendant No.1 - Smt. Kallabai Kamble. Apart from above, certain documents viz. Gram Panchayat

tax receipt, certificate issued by the Gram Panchayat are sought to be relied on for the purpose of continuation of temporary injunction in favour of the petitioners. Counsel for the petitioners in the aforesaid background would urge that the order of status-quo is in operation in the present petition and as a consequence of which the petitioners are in continuous possession over the suit property.

3. While countering aforesaid submissions, counsel for the respondents would support the impugned order and sought dismissal.

4. Considered submissions.

5. The petitioners are claiming settled possession over the suit property based on unregistered agreement of sale dated 17th December, 2014 as there are recitals of handing over possession by the defendant No.1 in favour of the petitioners.

6. Fact remains that the said document is notarized one and no mutation entry based on such document is placed on record to infer that possession was passed on to the petitioners as the defendant Nos.1 to 5 have succeeded their title to the said property.

7. This Court is required to be sensitive to the fact that the registered sale-deed executed in favour of defendant No.6 by defendant Nos.1 to 5 on 22nd April, 2015 categorically speaks of

possession being handed over in favour of defendant No.6. Such document is executed by all the legal heirs of the title holder who expired prior to the execution of the agreement in favour of the petitioners and the sale-deed in favour of defendant No.6 by defendant Nos.1 to 5. The position of law is, if possession is to be passed on the date of agreement of sale, then such document has to be registered one and unregistration of such document is an incurable defect in law.

8. In the aforesaid background, since the principle of possession follow the title is applied to the facts of the present case, the fact remains that this Court has left with no other option but to infer that respondent No.6 has received possession along with title. That being so, in my opinion, no case for interference in the extraordinary of this Court is made out.

9. As such, petition stands dismissed.

10. By consent of the parties, hearing of the suit is expedited.

[NITIN W. SAMBRE, J.]