

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 4075 OF 2021

Vinod s/o Wamanrao Tobare
Vs.
Sau. Charumati w/o Manohar Tekade

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. C.A. Joshi, Advocate for petitioner.
Mr. P.U. Kavishwar, Advocate for respondent.

CORAM : MANISH PITALE J.

DATE : 04.04.2022.

By this writ petition, the petitioner has challenged order dated 04.02.2020 passed by the Court of District Judge-4, Akola, (hereinafter referred to as the 'appellate Court'), whereby appeal filed by respondent (original plaintiff) has been allowed and order passed by the Court of 2nd Joint Civil Judge Junior Division, Akola, (hereinafter referred to as 'trial Court'), has been set aside. As a result, application at Exhibit No.5, filed on behalf of the respondent seeking temporary injunction, has been allowed in favour of the respondent.

2. In the present case, the respondent has filed a suit for permanent injunction and for damages

on the strength of a registered Sale-Deed dated 06.08.2019 executed in her favour by the original vendor of the property. In the said suit, the respondent filed the aforesaid application for grant of temporary injunction to restrain the petitioner from disturbing the peaceful possession of the respondent during the pendency of the suit.

3. The said application was opposed and the rival parties placed on record material in support of their respective stands, pertaining to *prima facie* case in favour of the respondent or otherwise.

4. By order dated 21.12.2019, the trial Court rejected the application for temporary injunction at Exhibit 5, on the basis that the respondent had failed to make out a *prima facie* case in her favour as regards possession in the suit property. Aggrieved by the same, the respondent filed appeal. By the impugned judgment and order, the appeal was allowed, the order of the trial Court was set aside and application for temporary injunction was granted in favour of the respondent.

5. Mr. Joshi, learned counsel appearing for the petitioner, submitted that the approach adopted by the appellate Court was in the teeth of the settled

law laid down by various judgments of the Hon'ble Supreme Court and this Court. Specific reliance was placed on the judgment of this Court in the case of *Dattatraya Shivaji Thorwat and Ors. Vs. Smt. Colthides Souza wd/o Caetano Piedade Vaz and Ors. 2006 (5) Mh.L.J. 750.*

6. It was submitted that although the agreement of sale executed between the vendor of the respondent and the petitioner, prior to the execution of the registered sale deed, was an unregistered document, but the attesting witness of the said agreement had filed an affidavit in support of the stand taken by the petitioner as regards possession in the suit property. It was submitted that affidavits of owner of a neighbouring field and certain labourers were also placed on record to support the case of the petitioner that he was and continues to be in possession of the suit property.

7. According to the learned counsel appearing for the petitioner, the aforesaid material was ignored by the appellate Court while wrongly interfering with the discretion exercised by the trial Court on the application for grant of temporary injunction filed on behalf of the respondent. It was submitted that merely because the respondent had

relied upon the registered Sale-Deed, the appellate Court ought not to have interfered with the order of the trial Court, while allowing the application for grant of temporary injunction.

8. On the other hand, Mr. Kavishwar, learned counsel appearing for the respondent submitted that the appellate Court has taken into consideration the registered Sale-Deed executed in favour of the respondent, which contained a specific clause as regards putting the respondent in possession of the suit property. The appellate Court also referred to an affidavit filed by the vendor giving details of the manner in which consideration amount was exchanged, while executing the registered Sale-Deed in favour of the respondent and the manner in which possession was handed over to her.

9. It was further submitted that the findings rendered by the trial Court were perverse and in the teeth of the material available on record, due to which interference in the order of the trial Court at the hands of the appellate Court was clearly in tune with the position of law regarding jurisdiction of an appellate Court in such an appeal from an order rejecting application for temporary injunction. On

this basis it was submitted that the impugned order did not deserve any inference.

10. This Court has perused the material on record and considered the contentions raised on behalf of the parties in that context. While considering such matters, the Court is required to come to a *prima facie* conclusion on the basis of material available on record, particularly in the backdrop of the rival claims made by the parties as regards possession in the suit property, wherein statements are made on oath by the rival parties.

11. The admitted position in the present case is that while there is a registered Sale-Deed dated 06.08.2019, executed in favour of the respondent, which contains a specific clause as regards handing over of possession to the respondent, the petitioner has relied upon an unregistered agreement allegedly executed prior in point of time, which also contains such a clause regarding handing over of possession of the suit property. The Sale-Deed being a registered document certainly has more weightage, at least insofar as rendering *prima facie* finding as regards possession is concerned.

12. But, since the petitioner has relied upon the unregistered agreement in the backdrop of affidavit sworn by one of the attesting witnesses, as also the person claiming to be owner of an adjoining property, it becomes necessary to enter into further examination of the rival claims. A perusal of the affidavit filed by the attesting witness shows that an amount of ₹3,00,000/- was given to the vendor by the petitioner in cash upon execution of the unregistered agreement. As opposed to this, the affidavit of the vendor before the trial Court wherein he supports the execution of the registered Sale-Deed, specifically states that he received an amount of ₹3,00,000/- through UTR and specific number of such transaction is quoted.

13. It is further stated that the balance amount of ₹ 65,000/- was handed over in cash at the time of execution of the Sale-Deed. The aforesaid version recorded in a registered document with specific reference to the transaction number, *prima facie*, demonstrates that more weightage ought to be given to statements made in such a registered document as regards possession, when compared with an unregistered agreement on which the petitioner has placed much reliance. It is strange that the trial Court does not even refer to the affidavit of

the vendor, which was very much placed before the aforesaid Court. On the other hand, the appellate Court has specifically referred to the aforesaid affidavit of the vendor while rendering *prima facie* findings in favour of the respondent.

14. As regards the affidavit of the attesting witnesses to the unregistered agreement, he has stated that amount of ₹3,00,000/- was allegedly given in cash to the vendor on behalf of the petitioner. At this stage, it is difficult to accept the aforesaid statement without any further material to support such an assertion. As regards the affidavits of the owner of the neighbouring field and labourers, it would amount to a situation of oath against oath between the rival parties. In such a situation, it cannot be said that the appellate Court committed an error in relying upon the registered Sale-Deed executed in favour of the respondent, as compared to the unregistered agreement on which the petitioner placed reliance.

15. As regards, the judgment in the case of ***Dattatraya Shivaji Thorwat and Ors.*** (supra), on which the learned counsel for the petitioner has placed reliance, there can be no quarrel with the proposition reiterated therein that the appellate Court

is not expected to reassess the material to reach different conclusion and that inference in such an order of the trial Court would be justified, if the discretion exercise by trial Court could be said to the arbitrary or perverse.

16. In the present case, this Court is of the opinion that the trial Court did reach perverse findings in favour of the petitioner, in the face of the registered of Sale-Deed, the clause regarding possession contained therein and the affidavit filed by the vendor giving details of the manner in which consideration was exchanged between the vendor and the respondent upon execution of the registered Sale-Deed. The appellate Court certainly did not commit any error when it found that the discretion exercised by the trial Court could be said to be arbitrary and perverse.

17. In view of the above, this Court finds that no error was committed by the appellate Court while passing the impugned order.

18. Accordingly, the writ petition is dismissed.

19. It is made clear that the observations made in the order passed by this Court are limited to the extent of examining the reasoning given by the appellate Court, while passing the impugned order on the question of grant of temporary injunction.

20. Needless to say, the trial Court shall proceed on the merits of the matter, without being influenced by such observations.

JUDGE

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GABHANE

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