

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.891 OF 2023**

SHAIKH SHAMINBI SHAIKH NASIR
VERSUS
NIVRUTTI GOPINATH KARAHALE AND OTHERS

...

Mr. M. G. Deokate and Mrs. S. A. Dhumal (Tambat), Advocate for
the Petitioner.

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**CORAM : SHARMILA U. DESHMUKH, J.
DATED : 17th FEBRUARY, 2023.**

PER COURT:-

1. Heard.
2. Caveat was filed on behalf of respondent no.1, and counsel for Respondent No 1 was present on 30.01.2023 and at his request the matter was adjourned today. Today, none appears for respondent no.1. Learned Counsel for Petitioner submits that stay is operating to his prejudice and hence the Petition is taken up for hearing.
3. By this petition, the challenge is to the order dated 23.12.2022 passed by the Appellate Court in Miscellaneous Civil Appeal No.24/2019, by which, the order passed by the Trial Court below Exhibit-5 in Regular Civil Suit No.422/2018 came to be reversed.
4. Regular Civil Suit No.422/2018 was instituted by the petitioner/plaintiff for setting aside the sale deed dated 12.09.2013 executed between the petitioner and the respondents in respect of property being Gram Panchayat property bearing

No.284/1 admeasuring 150 sq. mtr. By an application below Exhibit-5, the relief of temporary injunction was sought, which came to be allowed by the Trial Court. The Appellate Court has reversed this finding firstly by holding that, there are no documents which are produced on record by the petitioner to show her *prima facie* possession over the property and secondly, on the ground that the suit has been filed simplicitor for perpetual injunction and there is no relief sought for avoidance of sale deed.

5. Learned counsel for the petitioner submits that the Trial Court has interpreted the sale deed dated 12.09.2013 and has come to a *prima facie* finding that the said document is infact a mortgage deed, which had been executed for an amount of Rs.90,000/-. He would further submit that the findings of the Appellate Court are perverse in as much as one of the reliefs claimed in the suit is avoidance of the sale deed.

6. Considered the submissions of the learned counsel for the petitioner.

7. It is well settled that in an application for temporary injunction what is relevant is the factum of possession. In the present case, the property is Gram Panchayat property and documents such as tax receipts, gram panchayat records could have been produced on record to show factum of possession. The admitted position is that no such documents are produced on record and not even the affidavits of the adjacent land owners to *prima facie* establish the factum of possession of the petitioner over the suit property. On the other hand the Respondents have produced the sale deed of the suit property, wherein there is recital about handing over possession of the suit property. In

addition, the Respondents have produced the Form No 8 which is recorded in name of Respondent No 2.

8. It is the contention of the Petitioner that the sale deed dated 12.09.2013 was obtained by deception. It needs to be noted that the sale deed bears the signature of the husband of the Petitioner as witness and no steps were taken to seek cancellation of the sale deed. The true nature of the document dated 12.09.2013 will be decided at the time of the trial. For the purpose of considering the relief of temporary injunction, the petitioner has failed to show her *prima facie* possession over the suit property and as such there is no infirmity in the findings of the Appellate Court. However, the Appellate Court has factually erred by holding that the suit is for simplicitor injunction and has failed to appreciate the relief claimed in RCS No.422/2018.

9. Considering that there is failure to produce any material to show *prima facie* possession, irrespective of the erroneous finding as regards the absence of relief of avoidance of sale deed, the findings of the Appellate Court cannot be faulted with.

10. In light of the above, there is no merit in the petition. The petition stands dismissed.

(SHARMILA U. DESHMUKH)
JUDGE