

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2825 OF 2022

**PANDURANG VITTHAL WANI
VERSUS
KADU RAMALAL PATIL**

...
Mr. Mayur Salunke, Advocate h/f Mr. V.D. Salunke, Advocate for
Petitioner
Mr. V.V. Deshmukh, Advocate for Respondent
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 26th SEPTEMBER, 2023

PER COURT :

1. Leave to correct prayer clause.
2. Petitioner/plaintiff is aggrieved by order dated 22/10/2021, passed by learned Adhoc District Judge-2, Jalgaon, in Misc. Civil Appeal No.03/2018, thereby setting aside temporary injunction order passed by trial Court in petitioner's favour.
3. Petitioner/plaintiff filed Regular Civil Suit No.128/2017, seeking relief of redemption of mortgage claiming that, the sale transaction entered into between himself and respondent/defendant vide sale deed dated 02/02/2007 was in fact, a transaction of mortgage. Along with suit, application Exhibit-15 is filed by plaintiff for temporary injunction. Respondent/defendant appeared and resisted suit by filing written statement. He submitted that said

transaction is of outright sale and not of mortgage. Trial Court after hearing parties, passed injunction order thereby restraining defendant from creating third party interest, in any manner, in suit property, till disposal of suit.

4. Respondent/defendant challenged said order by filing misc. civil appeal, which is allowed by appellate Court. Hence, the present petition.

5. Heard learned advocate for petitioner and learned advocate for respondent. Perused writ petition memo, annexures thereto and impugned order.

6. Trial Court has passed order in favour of petitioner holding that, *prima facie* petitioner appears to be in possession of suit land. Adjoining land holders have also stated to revenue authority that petitioner has sown crops in suit land. So also, affidavits filed by adjoining land owners that petitioner is in possession of suit land, were taken into consideration by trial Court while passing order in favour of plaintiff.

7. Appellate Court, on the other hand, has upset said order observing that *prima facie* it appears that defendant is owner of suit property and he has right to use it as per his choice. Admittedly, defendant has mortgaged suit land as security for loan

of his family members. So, the possibility of defendant creating further encumbrances over suit property, cannot be ruled out. It is further observed that, in case defendant creates encumbrance on suit land during pendency of suit, then plaintiff's interest will be protected by Section 52 of Transfer of Property Act. Granting of injunction in favour of plaintiff would cause irreparable loss to defendant. Hence, appellate Court has set aside order passed by trial Court.

8. Learned advocate for respondent produced copy of sale deed dated 02/02/2007, in which there is specific recital that suit land is sold by petitioner/plaintiff to respondent/defendant and possession of the same is also given on the same day. Boundaries of suit land are also specifically mentioned in the sale deed. It is also mentioned that by putting east-west Bandh, suit land is given in possession of defendant. In view of said recitals and the fact that defendant has obtained loan from cooperative credit society by mortgaging suit land, trial Court has erred in giving mere weightage to the affidavits of adjoining land owners stating that plaintiff is in possession of suit land. Same mistake is committed by trial Court while accepting observations of revenue authority that, at the time of visit dated 17/12/2015 plaintiff appears to be in possession of entire land and adjoining land owners also stated that plaintiff has sown crops in suit land.

9. From the pleadings and documents, *prima facie*, it is clear that there is no material on record to indicate that the said transaction was of mortgage. In this view of the matter, appellate Court is justified in setting aside order passed by trial Court.

10. During the course of argument, it was asked to learned advocate for respondent/defendant whether he is intending to alienate suit land. On instructions, he makes statement that defendant is not intending to alienate suit land. The said statement is accepted as undertaking to the Court, which takes care of the apprehension of plaintiff. In the facts of the present case by accepting said statement writ petition is disposed of.

11. Needless to state that these observations are *prima facie* and shall not influence trial Court while deciding suit on merit.

(NITIN B. SURYAWANSHI, J.)