

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

WRIT PETITION NO.3553 OF 2022

Samsher Sureshrao Warpudkar,
Age – 39 years, Occu. Business.,
R/o Vishnu Nagar, Basmat Road,
Parbhani, Tq. and Dist. Parbhani

... Petitioner
(Orig. Plaintiff)

Versus

1. Manisha w/o Manish Jaiswal,
Age 48 yrs, Occ. Business
R/o Plot No. C-23, S.B. Colony,
Aurangpura, Aurangabad.
Tq. and Dist. Aurangabad.
2. Manish s/o Ramkisan Jaiswal,
Age 52 yrs, Occ. Business
R/o Plot No. C-23, S.B. Colony,
Aurangpura, Aurangabad.
Tq. and Dist. Aurangabad.
3. Pandurang Balasaheb Kailewad,
Age 38 yrs. Occ. Business
R/o Ramkrushna Nagar, Parbhani,
Tq. and Dist. Parbhani.

... Respondents

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Mr. V. V. Deshmukh, Advocate for Petitioner
Mr. A. P. Bhandari, Advocate for Respondent Nos.1 & 2
Mr. A. A. Joshi, Advocate for Respondent No.3

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WRIT PETITION NO.3566 OF 2022

Samsher Sureshrao Warpudkar,
Age – 39 years, Occu. Business.,
R/o Vishnu Nagar, Basmat Road,
Parbhani, Tq. and Dist. Parbhani

... Petitioner
(Orig. Plaintiff)

Versus

1. Pandurang Balasaheb Kailewad,
Age 38 yrs. Occ. Business
R/o Ramkrushna Nagar, Parbhani,
Tq. and Dist. Parbhani.

2. Manisha w/o Manish Jaiswal,
Age 48 yrs, Occ. Business
R/o Plot No. C-23, S.B. Colony,
Aurangpura, Aurangabad.
Tq. and Dist. Aurangabad.

3. Manish s/o Ramkisan Jaiswal,
Age 52 yrs, Occ. Business
R/o Plot No. C-23, S.B. Colony,
Aurangpura, Aurangabad.
Tq. and Dist. Aurangabad.

... Respondents

...

Mr. V. V. Deshmukh, Advocate for Petitioner
Mr. A. A. Joshi, Advocate for Respondent No.1
Mr. A. P. Bhandari, Advocate for Respondent Nos.2 & 3

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CORAM : NITIN B. SURYAWANSHI, J.

RESERVED ON : 30th AUGUST, 2023
PRONOUNCED ON : 15th SEPTEMBER, 2023

ORDER :

1. Since both these petitions raise similar question of law and fact, both were heard together and are being decided by this common order.

2. By these petitions, filed under Article 227 of the Constitution of India, petitioner challenges order dated 16/09/2021, passed by learned District Judge – 1, Parbhani, in Misc. Civil Appeal No.13/2019 and Misc. Civil Appeal No.14/2019.

3. It is the case of petitioner that he and respondent/defendant No.1 entered into the agreement to sale on 22/12/2017, in respect of the suit properties owned by defendant No.1. Legal notice dated 06/06/2018, was sent by the petitioner/plaintiff to defendant No.1 for specific performance of agreement to

sale. On 25/06/2018, defendant No.1 with malafide intentions, sold the house property/suit property to defendant Nos.2 and 3 by registered sale deed. Plaintiff, therefore, filed Special Civil Suit No.31/2018 for specific performance of contract, for perpetual injunction, and for declaration and cancellation of the sale deed executed by defendant No.1 in favour of defendant Nos.2 and 3. Along with the suit, application Exhibit-5 is filed by the petitioner. Trial Court allowed the application Exhibit-5 and protected possession of the plaintiff over the suit properties and restrained defendants from alienating the suit properties till final decision of the suit. Defendant No.1 and defendant Nos.2 and 3 challenged the said order by filing Misc. Civil Application No.14/2019 and Misc. Civil Application No.13/2019 respectively, which are partly allowed by the appellate Court by common judgment and order. Hence, the present petitions.

4. Heard learned advocate for petitioner and learned advocates for the respondents. Perused the memo of writ petitions, annexures thereto, the impugned order and affidavit-in-reply filed by respondent Nos.1 and 2 in Writ Petition No.3553/2022.

5. The suit properties are two agricultural lands and one house property. Execution of the sale deed dated 25/06/2018 in respect of house property, by defendant No.1 in favour of defendant Nos.2 and 3, is not disputed. According to plaintiff, he is already in

possession of the agricultural lands on '*Batai*' basis, since *Gudi Padwa* of 2015 and the suit house at Aurangabad was delivered to him on 27/03/2018. Defendant No.1 has denied his signature on the agreement to sale and has claimed that his signatures on the agreement are forged. Defendant Nos.2 and 3 have claimed that, they are in possession of the suit house at Aurangabad since they purchased it by way of registered sale deed.

6. Trial Court has held that, on perusal of agreement to sale dated 22/12/2017 executed by defendant No.1, receipt dated 27/03/2018 as well as publication issued in the news paper and affidavits of attesting witnesses and two persons residing adjacent to the suit house at Aurangabad, it appears that the plaintiff has *prima facie* proved his possession over the suit property. By virtue of agreement to sale and receipt dated 27/03/2018, possession of the suit house is given to the plaintiff. No material is produced on record to show that defendants are in possession of the suit properties and at *prima facie* stage possession of the plaintiff over the suit property is supported by the documents, i.e. agreement to sale and receipt, which are earlier in time. Therefore, by relying on these documents and affidavits of witnesses filed on record, trial Court has held that plaintiff has made out *prima facie* case and allowed the application Exhibit-5.

7. The appellate Court has set aside the decision of trial

Court holding that, it is not clear as to why the agreement and receipt are executed at Nanded and stamp papers were purchased at Nanded, so also, why those were notarized by notary advocate at Nanded when his jurisdiction is limited to Nanded District only, on two different dates i.e. 22/12/2017 and 27/03/2018. It is not explained as to why huge amount of Rs.80 Lakhs was paid in cash by the plaintiff. Parties to the agreement and receipt are residents of Parbhani. Considering the averments made by defendant No.1 in the written statement that, he never put his signature on the alleged agreement to sale as well as receipt and his signatures are manipulated, and that he has not received any consideration, and that after 2015, nobody can pay the amount of consideration in terms of cash that too of a huge amount of Rs.80 Lakhs, as per the amended provision of income tax. The appellate Court, therefore, has partly allowed both the appeals and restrained defendants or anybody claiming through them, from alienating or creating third party interest in the suit properties till disposal of Special Civil Suit No.31/2018.

8. Appellate Court has rightly come to the conclusion that plaintiff has failed to make out *prima facie* case to show his possession and no prejudice would be caused to the plaintiff if injunction is refused to him.

9. It is pointed out by learned advocate for respondents

that injunction was granted by the trial Court on 31/01/2019 and the same was stayed by the appellate Court by order dated 29/07/2019. The said stay order was challenged by the petitioner in Writ Petition Nos.14872/2019 and 14873/2019, which were withdrawn by the petitioner on 10/12/2019. This fact is not disclosed in the present petition. On this ground also, the petitioner is not entitled for equitable relief. It is mentioned in the affidavit-in-reply filed by respondent Nos.1 and 2 that they have purchased the suit property after giving public notice and after paying consideration amount of Rs.82,61,000/- by cheque and then registered sale deed is executed in their favour. These are additional factors which go in favour of the respondents.

10. For the aforestated reasons, no case is made out by the petitioner to warrant interference in the impugned order, in exercise of extraordinary writ jurisdiction. No illegality or perversity is found in the order impugned in present petitions. Writ petitions being devoid of merit are dismissed.

11. At this stage, learned advocate for petitioner prays for continuation of stay for further period of four weeks. For the reasons stated in this order, the request is rejected.

(NITIN B. SURYAWANSHI, J.)