

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

WRIT PETITION NO.12985 OF 2023

Jayashree Shridharrao Ambekar,
Age : 40 Years, Occ. Household,
R/o. Ram Mandir Galli, Kundalwadi
Tq. Biloli Dist. Nanded.

..Petitioner
(Original defendant)

VERSUS

Shivraj Hanmantrao Ratnagire,
Age : 39 Yers, Occ. Business,
R/o. Kundalwadi Tq. Biloli,
District Nanded.

.. Respondent
(Original Plaintiff)

.....
Advocate for the petitioner : Mr. V. V. Bhavthankar
....

CORAM : S. G. MEHARE, J.

DATE : 17.10.2023

ORDER :

1. Heard the learned counsel for the petitioner. The respondent/original plaintiff had filed a suit for specific performance of the contract along with the application for temporary injunction praying to restrain the present petitioner from alienating or creating third-party interest in the suit property and also for protecting his possession from the obstruction and disturbance from the present petitioner.

2. The trial Court had granted the injunction as prayed by the present respondent. The present petitioner impugned the said order before the District Judge-1, Biloli. The learned District Judge-1 Biloli, partly allowed the appeal and quashed and set aside the order restraining the present petitioner from alienating the suit property, and the order of injunction restraining him from causing any sort of obstruction or disturbance to his possession of the suit land was confirmed. Against the said order, the present petitioner is before the Court.

3. The learned counsel for the petitioner would submit that the respondent did not approach the Court with clean hands. Earlier, the respondent filed a suit between the same parties for perpetual injunction. He did not disclose the oral agreement to sell with the present petitioner. He had suppressed all these facts from the Court. Therefore, he is not entitled to an injunction of any kind. He has also advanced the arguments that the mother of the petitioner had let the suit premises i.e. shop to the respondent on rent. After her death, he did not continue the tenancy. Therefore, he has no right to seek an injunction.

4. The petitioner had admitted that the respondent was inducted in the suit shop as a tenant. However, there is nothing on record to show that his tenancy was legally terminated. Therefore, the learned District Judge-1, Biloli, has correctly issued an injunction against the petitioner not to obstruct or disturb his possession. Why he did not make the oral agreement to sell between him and the present petitioner public is a matter of fact that cannot be said to be the suppression of the facts and disentitling him to seek interim protection. If a worst case of the plaintiff taken that there was no oral agreement to sell but his tenancy is continued, the present petitioner has a legal remedy to terminate the tenancy and evict him. Till then, his possession has been correctly protected by the first appellate Court. The Court has examined the facts of the case and impugned judgment and order and did not find substance in the petition. Hence, the petition stands dismissed at the admission stage.

(S. G. MEHARE)
JUDGE

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