

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12617 OF 2021

Shivaji Jagdishwarrao Khare

.... Petitioner

Versus

Sow. Ashwini Sugriv Phad
and others

.... Respondents

.....

Mr. Girish K. Thigle Naik, Advocate for the Petitioner
Mr. Sudhir K. Chavan, Advocate for Respondent Nos.1 to 4

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 04th JULY, 2023

ORDER :

1. The petitioner is aggrieved by the order passed by the District Judge-1, Parbhani in Misc. Civil Appeal No.22 of 2021, thereby allowing Application 5 filed by the respondents.

2. Petitioner/plaintiff filed suit for declaration of ownership and cancellation of sale deeds of the suit property. In the suit, Application Exhibit-11 is filed seeking temporary injunction. Respondents/defendants appeared and opposed Application Exhibit-11 by filing written statement and say. The Trial Court allowed the Application Exhibit-11 filed by the plaintiff. Being aggrieved, the respondents/defendants filed Miscellaneous Civil Appeal No.22 of 2021, and in the said

Appeal, Application Exhibit-5 is filed by the respondents/defendants seeking stay to the order below Exhibit-11 passed by the Trial Court till disposal of the appeal. The said application is allowed by the Trial Court. Hence, the present petition.

3. Heard the learned advocate for the petitioner and learned advocate for respondents. Perused the writ petition memo, annexures thereto, and the impugned order.

4. It appears from the record that there is recital in the sale deeds, which are executed by the petitioner/plaintiff in favour of defendants that the possession of the suit property is handed over. The petitioner/plaintiff is disputed the same claiming that he is in possession, and he never handed over the possession. The Trial Court accepted the contention of the petitioner/plaintiff, however, the Appellate Court, considering recitals in sale deeds, has allowed Application Exhibit-5 filed by the respondents/defendants.

5. The suit is at the stage of framing of issues, and in the Appellate Court, the next date is 21st July, 2023 for consideration of the appeal on merits.

6. In that view of the matter, without going into the merits of the matter, the writ petition is disposed of by directing the parties to maintain *status quo* as on today and directing the Appellate Court to decide the appeal within three months from the date of receipt of writ of this order.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane