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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.30 OF 2023

Suman Ramprasad Dabhade

PETITIONER

VERSUS

Shaikh Salim Shaikh Haleem and Others

RESPONDENTS

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Mr. Aashis T. Jadhavar, Advocate for the petitioner

Mr. R. B. Bagul, AGP for respondent - State

Mr. Manish P. Tripathi, Advocate for respondent No.1

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 13th MARCH, 2023

ORDER :

1. The petitioner is aggrieved by the order dated 15th June, 2022 passed by learned District Judge-1, Parbhani below Exhibit-5 in Regular Civil Appeal No. 52 of 2021.
2. The petitioner, being plaintiff, filed Regular Civil Suit No. 95 of 2015 against the respondents – defendants for mandatory injunction directing defendant No.1 / respondent No.1 to remain present at the defendant's office for registration of sale deed of land bearing Survey No. 20/2 situated at village Sorja, Taluka-Jintur and complete process of registration of sale deed or in the alternative, a mandatory injunction was prayed directing

defendant No.1 to execute fresh sale deed in favour of the plaintiff of land survey No. 20/2 admeasuring 8 Hectare 63 *Are*, to the extent 2 Hectare 40 *Are*.

3. After hearing the parties and recording the evidence, the Trial Court dismissed the suit by judgment and order dated 20th November, 2021.

4. The petitioner challenged the said judgment and order passed by the Trial Court, by filing Regular Civil Appeal No. 52 of 2021. In the said appeal, the petitioner, being the appellant, filed application Exhibit-5 for temporary injunction. The said application is rejected by the Appellate Court, hence the present writ petition.

5. Heard learned advocate for the petitioner, learned advocate for respondent No.1 and the learned Assistant Government Pleader for the State. Perused the grounds raised in the writ petition and the documents filed on record so also the order passed by the Trial Court in the suit and the order impugned in the present petition, passed by the Appellate Court.

6. The Trial Court has dismissed the suit, holding that the plaintiff has failed to prove that there was an oral agreement to sale. The Trial Court did not find the evidence led by the plaintiff,

to be reliable and trustworthy. The Trial Court has reached a conclusion that the plaintiff has failed to prove the oral agreement, by cogent, convincing and reliable evidence and that there is no evidence on record to prove that defendant No.1 had accepted an amount of Rs.2,50,000/- as earnest amount.

7. The Appellate Court, in the impugned order, has observed that both the parties are claiming their respective possession over the suit property and defendant No.1 has filed copy of seven twelve extract of the suit land and copy of Mutation Entry No. 243 in support of his contention. It is further observed that by way of agreement (Exhibit-92), respondent No.1 has given possession of the suit property to Gangadhar Ravanbapu Jawale, at the time of execution of the agreement. Considering the averments in the said agreement, the Appellate Court, *prima facie*, came to the conclusion that even respondent – defendant No.1 is not in possession of the suit property. It is, therefore, held that both the parties have failed to establish their respective possession over the suit property and Gangadhar Ravanbapu Jawale, who *prima facie* appears to be in possession of the suit property, is not a party to the proceedings before the Court. The Appellate Court, therefore, held that the plaintiff-appellant has failed to establish her possession over the suit property and she

failed to establish *prima facie*, case, balance of convenience in her favour and it cannot be said that she would be put to irreparable loss if injunction is refused.

8. The order passed by the Appellate Court is a well reasoned order and no illegality or perversity is found in the order impugned in the writ petition. Writ petition, being devoid of merit, is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE