

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

**WRIT PETITION NO.826 OF 2022**

**SAU. KAVITA RAJENDRA PATIL  
VERSUS  
GOKARNABAI GULAB PATIL AND ANOTHER**

...  
Advocate for Petitioner : Mr. Paresh B. Patil (Borse)  
Advocate for Respondent No.1 : Mr. V.S. Khairnar  
Advocate for Respondent No.2 : Mr. M.C. Ghode  
...

**CORAM : NITIN B. SURYAWANSHI, J.**

**DATE : 17<sup>th</sup> JULY, 2023**

**PER COURT :**

1. Challenge in this petition is to the order dated 03/09/2021, passed by learned District Judge-2, Jalgaon, in Misc. Civil Appeal No.13/2021 and order dated 03/03/2021, passed by learned 3<sup>rd</sup> Joint Civil Judge, Junior Division, Chalisgaon, below Exhibit-6 in Regular Civil Suit No.98/2017, thereby rejecting application filed by petitioner for temporary injunction.

2. Petitioner/plaintiff filed the suit for specific performance of oral agreement of sale of the suit house, contending that respondent/Defendant No.1, cousin sister of petitioner's husband, namely Gokarnabai Gulab Patil, sold her agricultural land bearing Gut No.41/b/2/b to the petitioner by registered sale deed dated 23/05/2014 and at that time, petitioner was put in possession of the suit house on the basis of oral agreement for sale by accepting

earnest amount of Rs.1 Lakh and therefore, petitioner is in continuous possession of the suit house from last seven years. However, Gokarnabai subsequently sold the suit house to respondent/defendant No.2 by way of registered sale deed, which contains recital that respondent No.2 was put in possession of the suit house on the same day. Except registered sale deed relied upon by defendant No.2, there is nothing on record to *prima facie* show that possession of the suit house is with respondent No.2. Along with the suit, petitioner filed application Exhibit-6. After hearing the parties, said application is rejected by the trial Court and said order is confirmed by the appellate Court in appeal. Hence, the present petition.

4. Heard learned advocate for petitioner, learned advocate for respondent No.1 and learned advocate for respondent No.2. Perused the memo of writ petition, annexures thereto and the impugned orders.

5. It is a matter of record that petitioner is claiming possession of the suit house on the basis of oral agreement of sale. Admittedly, respondent No.1 Gokarnabai is original owner of the suit house, who has sold the suit house in favour of respondent No.2, by registered sale deed dated 07/02/2017, wherein there is recital of handing over of possession to respondent No.2. Namuna

No.8 of the property is in the name of respondent No.2. Respondent No.2 has produced tax receipts of the Gram Panchayat in respect of the suit house. There is no document to support possession of the petitioner on record.

6. Considering the documents placed on record and pleadings of the parties, both the Courts have recorded concurrent finding of fact that there is no material on record to establish possession of the petitioner/plaintiff over the suit house. Petitioner has failed to *prima facie* prove her case. Balance of convenience is not in favour of the petitioner. Irreparable loss would be caused to the respondents if injunction is granted in favour of petitioner, without there being any material in support of her claim.

7. Reliance is placed on ***Baban Anantrao Naik Vs. Sau. Pramila Uttamrao Yenare and Another, 2011 (6) ALL MR 15***, by the learned advocate for petitioner, wherein it is held that at the time of determination of an application for temporary injunction, factum of possession would only be the relevant factor and whether possession is lawful or not would not be the subject matter of inquiry. In the case in hand, since handing over of possession is mentioned in the registered sale deed executed in favour of defendant No.2, the same is rightly considered by both the Courts below.

8. These observations are of no assistance to the petitioner as the facts of the present case are different. The petitioner has failed to make out *prima facie* case in her favour. In that view of the matter, no case is made out by the petitioner to interfere in the impugned order, in exercise of extraordinary writ jurisdiction. Writ petition being devoid of merit is dismissed.

9. It is made clear that the observations in this order are *prima facie* and the trial Court shall not be influenced by the same while deciding the suits on merit.

**(NITIN B. SURYAWANSHI, J.)**