

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

**WRIT PETITION NO.9328 OF 2022**

Shri Digambar Bhagwat Khade  
Age-63 years, Occ- Agri.  
R/o. Plot No. 32, Gat No. 49,  
Ganesh Colony, Jalgaon,  
Tq And Dist. Jalgaon

Petitioner  
[Ori. Plaintiff]

Versus

President of Tapasvi Hanuman Bahuuddesheey  
Sanstha, Jalgaon, Shri. Sarjudasi Guru  
Rammurtidasji Maharaj

Respondent  
[Ori. Defendant]

Mr. A.J. Patil, Advocate for the petitioner.  
Mr. V.B. Patil, Advocate for the respondent.

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

**DATE : 7<sup>th</sup> AUGUST, 2023**

**ORDER :**

1. Petitioner has challenged the order passed by learned Civil Judge, Junior Division, Jalgaon, in Regular Civil Suit No. 96/2022, below Exhibit-6, thereby rejecting the temporary application filed by the petitioner, which is confirmed by learned District Judge-2- Jalgaon in Miscellaneous Civil Appeal No. 38/2022.

2. Petitioner/plaintiff filed suit for simplicitor injunction in respect of the suit property against the respondent/defendant.

In the suit, application Exhibit-6 for temporary injunction is filed. Defendant appeared in the suit and filed written statement cum say to the suit as well as to application Exhibit-6. Trial Court, after hearing the parties rejected the temporary injunction application. Said order is confirmed by the Appellate Court. Hence, the present petition.

3. Heard the learned advocate for the petitioner and learned advocate for the respondent. Perused the memo of writ petition, annexures and the impugned orders.

4. It appears from the record that injunction is sought by the petitioner in respect of 1 Hectare 22 Are area out of Gat No. 753. Respondent/defendant has come out with a case that 5 Are land out of Gat No. 753 is gifted in favour of harmit/respondent, which is being used for construction of temples and for conducting religious functions.

5. It further appears from the record that reliance is placed by the plaintiff on the agreement to sale dated 27.01.2015, executed by Chandulal Patel in favour of plaintiff in respect of the suit property. Agreement to sale dated 12.02.2015 is also executed by Chandulal Patel in favour of

respondent/defendant. In the agreement to sale executed by Chandulal Patel in favour of plaintiff there is no recital that possession is handed over to the plaintiff. On the contrary, there is a specific recital that at the time of execution of sale deed, after measurement of the suit property possession will be handed over.

6. Considering all these aspects, Trial Court as well as the Appellate Court have rightly rejected the temporary injunction application filed by the plaintiff. While rejecting the application, Trial Court as well as the Appellate Court have taken into consideration all the relevant factors including photographs of the property, which is in possession of respondent/defendant and said possession is held to be since long.

7. Taking into consideration the gift deed executed in favour of defendant and the concurrent finding of fact recorded by the Courts below, no case is made out by the petitioner to warrant interference in the orders impugned in the present petition. Writ petition being devoid of merit is dismissed.

**[NITIN B. SURYAWANSHI, J.]**