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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13037 OF 2022

Arun Narayan Shinde

PETITIONER

VERSUS

Prakash Dnyandevarao Shinde and Another

RESPONDENTS

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Mr. P. R. Katneshwakar h/f Mr. V. U. Jadhav, Advocate for petitioner

Mr. A. N. Sabnis, Advocate for respondent No.1

Mr. N. G. Kale, Advocate for respondent No.2

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 8th JUNE, 2023

ORDER :

1. This petition, filed under Article 226 and 227 of the Constitution of India, impugns order dated 4th October, 2021 passed by Civil Judge, Junior Division, Latur below Exhibit-5 in Regular Civil Suit No. 297 of 2021, which is confirmed by District Judge – 4 Latur vide order dated 19th August, 2022 passed below Exhibit-18 in Miscellaneous Civil Appeal No. 54 of 2021.

2. The petitioner filed Regular Civil Suit No. 297 of 2021 for injunction against the respondents – defendants. Along with the suit, application Exhibit-5 is filed. The defendants appeared and

opposed the suit as well as the temporary injunction application. The Trial Court, after hearing the parties, rejected the application filed by the petitioner. The order of the Trial Court is confirmed by the Appellate Court vide order passed below Exhibit-18 in Miscellaneous Civil Appeal No. 54 of 2021. Hence, the present petition.

3. Heard learned advocate for the petitioner and the learned advocates for the respondents. Perused the memo of the writ petition and the documents annexed along with the same and the citation relied on by the learned advocate for the petitioner.

4. The petitioner claims to be in possession of the suit property on the basis of sale deed dated 16th April, 2008, executed by defendant – respondent No.1 in his favour. On the basis of said registered sale deed, name of the petitioner is recorded in the revenue record, vide Mutation Entry No. 484.

5. While opposing the suit, the defendant has admitted execution of the said sale deed under compelling circumstances, which are stated in the written statement. It is claimed that no consideration was paid and the sale deed was executed by way of security and it was not out and out sale.

6. To prove the possession, both the parties have filed

affidavits. The plaintiff has filed affidavits of his close relatives, who have stated that the plaintiff is in possession of the suit land and the defendant has filed affidavits of the adjoining land owners. Under the directions of the Trial Court, the Talathi visited the spot and ascertained the position and submitted a report that defendant No.1 is in possession of the suit land.

7. The Trial Court, by giving elaborate reasons, rejected the application Exhibit-5. The said order is confirmed by a well reasoned order passed by the Appellate Court.

8. In view of the peculiar facts and circumstances of the case and the affidavits placed on record, one of which is of the attesting witness to the sale deed, who has stated on oath that no consideration was passed at the time of execution of the registered sale deed, in my view, both the Courts are justified in refusing relief in favour of the plaintiff.

9. Learned advocate for the petitioner has relied on a judgment of learned Single Judge of this Court in "***Shamrao Ganpat Chintamani V/s Kakasaheb Laxman Gorde***" 2008 (2) ***Mh.L.J. 819*** in support of his submissions. It is observed in the said judgment that the defendant in that case admitted execution of agreement, however, alleged that the agreement

does not refer the true nature of the transaction, but it was an agreement executed only to secure the amount taken by him. It was also pleaded that no agreement of sale, as alleged by the plaintiff, was executed. In that view of the matter, learned Single Judge of this Court has observed that -

*15. On the premises of these facts, the learned Single Bench of this Court, in paragraph No. 13 in "**Venkat Dharmaraji V./s Sishwanath**" 1983 Mh.L.J. 284 has observed as under -*

"..... However, I am at present inclined to take the view that the agreement of sale is on a stamp paper and this agreement is specifically admitted by the defendant to the extent of execution. In view of the admission of the respondent No.1 at this stage it would be improper to infer that prima facie the recitals in the agreement are not true....

16. Having considered the pleadings and material on record, in my view, prima facie case is established by the plaintiff. The plaintiff seems to have been inducted into physical possession of the suit property on the basis of document of sale dated 22.3.2004. From the sale deed in question, it appears that the plaintiff has purchased the suit property for the consideration of Rs.30,000/-. This fact needs to be considered by way of balance of convenience in favour of the plaintiff. The plaintiff has established that in case of refusal of the injunction, he would be put to irreparable loss. In this view of the matter, order passed

by the first Appellate Court needs to be quashed and set aside by allowing application Exhibit-5 till disposal of the suit. The suit is of the year 2005. This suit also needs to be directed to be disposed of expeditiously.”

10. Though in the case in hand, there is a recital in the registered sale deed relied on by the plaintiff that possession of the suit land was handed over to the plaintiff, considering the affidavits of the adjoining land owners, filed on record, this Court is of the *prima facie* view that the plaintiff has failed to prove his possession over the suit property. Therefore, the citation relied upon by the learned advocate for the petitioner is of no help to the petitioner.

11. Both the courts have recorded concurrent findings of facts, which are not liable to be interfered with in the extraordinary writ jurisdiction of this Court. Writ petition being devoid of merit, is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE