

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

WRIT PETITION NO.12843 OF 2023

Avinash S/o Ramesh Sawant,
Age 27 years, Occu. Agriculturist,
R/o Akhada Balapur,
Tq. Kalamnuri, Dist. Hingoli.

... **Petitioner.**

Versus

1. Durgadas S/o Pannalal Agrawal,
Age : 61 years, Occu. Business,
R/o Warangaphata,
Tq. Kalamnuri, District Hingoli.

2. Shaamsundar S/o Pannalal Agrawal,
Age : 57 years, Occu. Agriculturist,
R/o Akhada Balapur,
Tq. Kalamnuri, District Hingoli.

... **Respondents.**

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Advocate for Petitioner : Mr. Mandlik Pratap Pravin.
Advocate for Respondent No.1 : Mr. Amol N. Patale.
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CORAM : S. G. MEHARE, J.
DATE : 18.10.2023

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith and heard finally
by consent of the parties.

2. The respondents are real brothers. Respondent
No.1/original plaintiff was the owner of the suit land. He sold
it to his brother, respondent No.1, on 17.10.1994 by registered

sale deed, and the mutation was recorded in his name. Respondent/plaintiff filed a suit for Specific Performance of Contract in 2018 based upon an agreement to sell dated 16.12.2019. Under that agreement to sell, possession of the suit property was handed over to him. There was no date fixed for the execution of the sale deed. In the year 2018, the plaintiff/respondent No.1 served a notice upon the brother Shaamsundar. Respondent No.2 performed the part of the contract. He failed to perform the part of his contract. Therefore, a suit for the specific performance of the contract was filed. During the pendency of the suit, the present appellant purchased the suit property by a registered sale deed dated 09.12.2021. Subsequently, he has been added as a party to the suit. The plaintiff/respondent No.1 had lodged the police report on 04.11.2022 against his brother and the present appellant, alleging that they were trying to disturb his possession. Thereafter, on 27.1.2023, an application for temporary injunction was filed. Considering the facts of the case, the learned trial court granted the injunction against the present appellant. The appeal against the said order was preferred. The District Judge-1, Hingoli, was pleased to dismiss the appeal. Against those orders, the petitioner is before this Court.

3. Learned counsel for the petitioner submits that no cause of action was pleaded in the application for temporary injunction. Since the date of the purchase of the land by the petitioner, there have been no complaints against him. He had mutated his name on the basis of the sale deed on the property card. The name of the plaintiff was recorded in Namuna 8. The plaintiff had challenged the mutation entries of the present petitioner before the Revenue Authorities, and Revenue Authorities have observed that the entries in the name of the plaintiffs were without any basis. The order of the Tahsildar was impugned before the S.D.O. The learned S.D.O. also rejected the appeal.

4. The vehement argument of the learned counsel for the appellant is that both the Courts have erred in believing that plaintiff/respondent No.1 was in possession as the agreement to sell was impounded, and the necessary Court fee has been recovered during the pendency of the suit. The learned counsel for the appellant would submit that there was an inordinate delay in filing the suit for Specific Performance of the Contract. Soon after the execution of the sale deed in favour of the present petitioner, no injunction was sought. The Courts have erred in holding that Section 53-A of the Transfer of Property

Act has been incorrectly applied. It has been incorrectly held that in view of Explanation-I to Article 25 of the Stamp Act, it is deemed conveyance. It also argued that the present petitioner had been handed over the possession of the suit land after the sale deed. Therefore, there was no case for a temporary injunction.

5. Learned counsel for the contesting respondent/original plaintiff would submit that the petitioner was never in possession. A formal sale deed was registered during the pendency of the suit. He is not a bona fide purchaser. He was well aware that the plaintiff was in possession. A specific cause of action has been pleaded in the temporary injunction application. When the cause of action arose for the suit, the plaintiff did not feel it appropriate to seek the temporary injunction. The report on 04.11.2022 was lodged, alleging that both defendants tried to disturb his peaceful possession of the suit plot. The application for temporary injunction was correctly filed when an attempt to dispossess him was made. The possession of the suit plot was handed over to him on the day of the agreement to sell. Since then, the plaintiff has enjoyed the peaceful possession of the suit plot. The vendor of respondent No.2 was indebted and could not run the Oil Mill

on the suit plot. Therefore, he sold it to the plaintiff with the liabilities and encumbrances. He submits that the orders impugned before the Court are legally correct and proper.

6. Admittedly, the petitioner got interest in the suit plot on 09.12.2021. Before that, the suit for specific performance of the contract was filed against the vendor. The suit of the plaintiff was based upon an agreement to sell dated 16.12.1999. Both of them were the brothers. By way of agreement to sell, the possession of the suit plot was handed over to the plaintiff, and he was enjoying it. Agreement to sell does not create any right, title or interest in the property. However, such documents can be used for collateral purposes. The entry in the name of the petitioner was mutated on the basis of the registered sale document. It was impugned before the Revenue Officers. The document of agreement to sell has been impounded, and stamps have been recovered. The root question is whether the possession of the suit plot was handed over to the petitioner by his vendor. The vendor knew that his brother had already filed the suit for Specific Performance of Contract against him. The vendor's duty was to make the defects in the title known to the purchaser. The petitioner did not say that his vendor never disclosed to him the pendency of

the suit and handing over the possession to the plaintiff in view of the agreement to sell dated 16.12.1999. By Act 48 of 2001, Section 17 of the Registration Act was amended and implemented on 24.09.2001. Before the said amendment, there was no provision that the documents containing contracts to transfer for consideration, any immovable property for the purpose of Section 53-A of the Transfer of Property Act, 1882, was required to be registered. However, after 24.09.2001, if the possession is handed over on the basis of the agreement to sell, it is compulsorily registered under Section 17 of the Registration Act. In those circumstances, Section 53-A of the Transfer of Property Act comes to the plaintiff's aid. He has also complied with the requirement to seek the benefit of Section 53-A of the Transfer of Property Act by filing a suit. It appears that the police report was lodged against the petitioner and respondent No.2, alleging that the possession of the plaintiff over the suit plot has been tried to disturb.

7. There was no substance in the argument of the learned counsel for the petitioner that since the day of execution of the sale deed in favour of the petitioner, no injunction was sought. Hence, the petitioner can not seek an injunction. Obviously, it might not have been filed as there was no cause of action. But,

when the cause of action arose, he sought relief from the Court. There is no rule that a temporary injunction application shall be filed along with the suit plaint. It is to be filed when the cause of action arises and the person concerned has an apprehension of causing injury to his property and rights. It seems that the application for temporary injunction was filed at the right stage. Whether the possession of the suit plot was handed over to the petitioner as the said transaction was during the pendency of the suit is doubtful. In view of the agreement to sell, the possession of the plaintiff is to be believed. Both Courts have correctly issued the injunction against the petitioner and respondent No.2. There is no substance in the writ petition.

8. Hence, the writ petition stands dismissed at the admission stage.

9. Rule made discharged.

10. No orders as to costs.

(S. G. MEHARE, J.)

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vmk/-