

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1893 OF 2023

Akshay Anil Zavar.

...Petitioner.

Versus

Santosh Vasant Kunde.

..Respondent.

Mr. Vikram Sathye i/b Mr. Anup Lahoti for the petitioner.

Coram : Sharmila U. Deshmukh, J.

Date : July 27, 2023.

P. C. :

1. The challenge in the petition is to the order dated 20th October 2022 passed by the appellate court rejecting the petitioner's appeal and confirming the order of the trial Court rejecting the application for injunction.

2. Special civil suit no.321 of 2022 was instituted by the petitioner seeking the relief that the power of attorney executed in favour of respondent no.3 is required to be cancelled and that the same is not binding on the plaintiff and the suit property and for a declaration that the sale deed dated 17th November 2021 executed by defendant no.3 in favour of defendant nos.1 and 2 is illegal and liable to be

cancelled. In the said proceedings an application for injunction came to be filed seeking to restrain the defendants from creating third party rights in the suit property which came to be rejected by the trial Court, as against which appeal came to be filed which confirmed the order of the trial court of rejection giving rise to the present petition.

3. Heard learned counsel appearing for the petitioner.

4. Learned counsel appearing for the petitioner submits that the power of attorney was executed in favour of respondent no.3 only for the purpose of submitting of documents for registration. He would submit that the power of attorney has been misused by respondent no.3 and the said property has been sold in favour of respondent nos. 1 and 2. He would further contend that the property in question has been purchased from one Priti Bipin Bafana and the said portion was an undivided share of survey no.375(3). He would further contend that he has not received any consideration in respect of the said sale deed. He would urge that the averments in the plaint would indicate that due to financial constraints, he had taken a loan from respondent no.3 and one Mr. Shishir Sadashiv Shinde and at that time the power of attorney came to be executed and also said Shishir Sadashiv Shinde forced him to execute an agreement to sale in which the signature of

the petitioner was taken on blank paper which was misused and sale deed has been executed by respondent no.3 in favour of respondent nos. 1 and 2. He has invited the attention of this court to the blank piece of paper which is at page 50 and the sale deed for the purpose of showing that the blank paper is used for executing the sale deed.

5. Considered the submissions.

6. The petitioner has come with the case that he had obtained loan from Mr. Shishir Sadashiv Shinde and his signatures were obtained on blank piece of paper which was misused by Mr. Shishir Sadashiv Shinde with whom he had entered into an agreement of sale. That being so, in special civil suit no.321 of 2022 the said Mr Shishir Sadashiv Shinde has not been made a party.

7. The appellate court while rejecting the petitioner's application has considered the copy of sale deed which is produced on record and has noticed the plaintiff's photographs on the sale deed as well as his signature on the sale deed. The submission of learned counsel for the petitioner as regards this signature on the sale deed is that the same is by reason of the signature which was obtained on a blank piece of paper. But the fact remains that the sale deed contains the

photograph of petitioner and also his signature. Apart from making the allegation of fraud there is nothing on record to show that the sale deed was not executed by the plaintiff.

8. As far as the issue of consideration is concerned, the same will be matter of evidence as to whether the consideration was taken by respondent no.3 or was handed over to the plaintiff. The fact remains that at this stage there is a registered sale deed in favour of respondent nos.1 and 2 executed, not by respondent no.3 as claimed, but by the plaintiff. The allegations of fraud as well as the non payment of consideration will be an issue which will be considered after the trial has been held.

9. Having regard to the fact that there is a valid registered sale deed in favour of respondent nos.1 and 2, *prima facie* no case for grant of injunction is made out. Respondent nos.1 and 2 being *bona fide* purchasers cannot be subjected to restraining orders on the basis of fraud which is alleged to be committed by Mr Shishir Sadashiv Shinde who is not even made party to the proceedings.

10. Apart from the issue of *prima facie* case for grant of injunction, the balance of convenience as well as the issue of irreparable loss will

have to be considered. The execution of registered sale deed in favour of respondent nos.1 and 2 tilts the balance of convenience in favour of respondent nos. 1 and 2. In event, the restraining orders are passed as against the purchasers of property for valuable consideration irreparable loss will be caused to respondent nos.1 and 2. The trial court as well as the appellate court have rightly rejected the petitioner's application for injunction and in exercise of powers of this court under article 227 of the Constitution of India, I am not inclined to interfere with the concurrent findings. The writ petition being devoid of merits stands dismissed

[Sharmila U. Deshmukh, J.]