

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1453 OF 2023

Shivaji Sambhu Jadhav Petitioner

Vs.

Raghunath Shrirang Sathe Respondent

Mr. Abhijit Kulkarni i/b D. D. & Abhijit Associates for the
Petitioner.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 13 JULY 2023.

P. C.

1. The challenge in the petition is to the order dated 24/2/2022 dismissing the petitioner's appeal preferred against the order of the trial Court rejecting the petitioner's application below Exhibit 5 seeking temporary injunction against the defendant.

2. The petitioner is the original plaintiff in Regular Civil Suit No.174/2021 seeking relief of perpetual injunction in respect of two properties, one being landed property and other being house which is constructed on the landed property. Landed property is described as suit property "A" and house as suit property "B". The case of the plaintiff is that the defendant was the original owner of

the suit property and on 4/2/2015, the suit property was sold to one Mohan Kakade and on 31/8/2016 the plaintiff purchased the suit property from Mohan Kakade and since then the plaintiff is the owner and has possession of the suit property. It is further averred that as regards suit property "B" the defendant No.1 approached the plaintiff for grant of permission for residing in the suit property -B in the year 2019, which was permitted by the plaintiff. The cause of action is stated to arise on 15/1/2021 when the defendant refused to vacate the suit property and obstructed the plaintiff's possession over the suit property. The application seeking interim injunction was rejected by the trial Court, as against which the plaintiff preferred appeal which was also dismissed giving rise to the present petition.

3. Heard Mr. Abhijit Kulkarni for the petitioner.

4. Learned counsel for the petitioner contends that the plaintiff had purchased the suit property under a registered sale Deed and the recital in the sale Deed discloses that the possession of the suit property was handed over to the plaintiff. He would

further contend that as far as the defendant is concerned, the documents which are presented by the defendant for the purpose of establishing his possession are the affidavit of adjoining owners. He would further contend that it is not in dispute that the possession of the house property i. e. the suit property B is with the defendant. However the possession of suit property "A" is with plaintiff. He draws support from the provisions of Record of Rights (Preparation and Maintenance Rules) that in the event the land is not found in possession of the owner, the name is entered in the register in Form 14, which is not so in the present case and as such he would urge that the petitioner being the owner is in possession of the property.

5. Considered the submissions.

6. It is not in dispute that the suit property B which is house property is situated on the suit property A which is landed property in which maze has been cultivated and there are fruit bearing trees. Considering that the the petitioner has admitted that the house property was in possession of the defendant, for the

purpose of obtaining interim injunction, it is required that the petitioner produces material on record to demonstrate that although the house property was in possession of the defendant the land underneath as well as surrounding area of the house property was in continuous possession of the petitioner. The petitioner seeks to rely on the Sale Deed which has been executed in 2016 to contend that the possession of the suit property was handed over to the petitioner. However, in my opinion same does not assist the case of the petitioner for the reason that in spite of recital in the Sale Deed, the admitted position is that the suit property is in possession of the defendant. The trial Court has taken this fact into consideration while rejecting this application.

7. The defendant has come with a case that the transaction between plaintiff and Mohan Kakade was money lending transaction and defendant was in need of money nominal sale deed was executed. The defendant claims to be in possession of suit property and contends that he has laid down pipeline and cultivating suit property.

8. Considering the case put forward by defendant and

the admitted position being that the defendant has produced evidence in form of affidavit of adjoining neighbours to show possession, it was expected of petitioner to produce cogent material on record to *prima facie* prove his possession, which the plaintiff has failed to do. Considering the material on record trial Court has observed that *prima facie* the plaintiff- petitioner does not have possession over the suit property, which finding has been upheld by appellate Court. As far as reliance of Form No.14 is concerned, perusal of the impugned orders do not indicate that such submission was canvassed before the trial Court or appellate Court and as such I am not inclined to consider this submission.

9. In light of above, and considering the concurrent findings of fact, there is no reason for interference by this Court in exercise of powers under Article 227 of the Constitution of India.

10. The writ petition stands dismissed.

SHARMILA U. DESHMUKH, J.