

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

WRIT PETITION NO.8026 OF 2023

Bhimrao Shankar Kadlag (Patil)

..... Petitioner

Vs.

Arun Dhondur Patil & Ors.

..... Respondents

Mr. Lakshayaved R. Odhekar a/w. Mr. Sayed Nabeel for the
Petitioner.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 5th JULY 2023.

P. C.

1. Heard.

2. By this petition the challenge is to the order of the appellate Court dated 13/6/2022 rejecting the appeal of the petitioner thereby confirming the order of the trial Court. For sake of convenience the parties are referred to by their status before the trial Court.

3. The petitioner claims to be the owner and in possession of land being plot Nos.13 and 26 located in Gut Nos.372 and 373 of village Jalalpur, District Nashik. The case of the petitioner in the plaint is that as the land at Jalalpur was converted into non agricultural use, the petitioner required

agricultural land to carry out agricultural activity and as such entered into transaction with one Savjibhai Nagjibhai Thummar for exchange of properties. It was agreed that plot Nos.14 to 18 and plot Nos.20 to 24 would be transferred in the name of Mr. Thummar in exchange for agricultural land. The case of plaintiff is one of the property sought to be purchased from Savjibhai Thummar was subject matter of suit filed by defendant No.1 against Savjibhai Thummar. The case of the petitioner-plaintiff is that as the defendant No.1 started threatening, the plaintiff decided to settle the issue with defendant No.1 and it was agreed that defendant No.1 will be given suit property Plot No.13 and he will withdraw the suit and return all documents. The case of plaintiff is that defendant No.1 withdrew his suit and plaintiff and defendant No.1 executed an agreement to sale dated 23/01/2015 and thereafter a cancellation Deed dated 27/01/2015 was executed which the plaintiff claims is forged and fabricated. The plaintiff claims that being pressurized by defendant No.1, the plaintiff executed sale Deed with defendant Nos.2 and 3 dated 27/1/2015 and 29/1/2015 without any consideration and within a gap of 4-5 days the property was sold to defendant No.5. The case of the

plaintiff is that the sale Deeds were executed by fraud and coercion by defendant Nos.1 to 5 jointly and as such suit came to be filed seeking to challenge the sale Deeds which were executed between the plaintiff and defendant Nos.2 and 3.

4. Application for injunction restraining the defendants from creating any third party right in the suit property or for disturbing peaceful possession came to be rejected by the trial Court and the Appeal being MCA No.91/2018 was also rejected.

5. Heard Mr. Lakshayaved R. Odhekar, learned counsel for the Petitioner.

6. Learned counsel for the petitioner has invited attention of this Court to the plaint which sets out the transaction between the plaintiff and defendant Nos.2 and 3 and would contend that after the sale Deeds were executed by defendant Nos. 2 and 3, same came to be sold to defendant No.5 within gap of few days and for the same value which casts doubt about the transaction in question. He would further submit that he is in possession of the suit property and as such relief that he seeks is that there should not

be third party rights created. He would contend that the petitioner essentially seeks to ensure that suit does not become infructuous and/or to prevent multiplicity of proceedings by subsequent transfers of the property.

7. Considered the submissions. The parties are referred to by their status before the Trial Court.

8. It is not in dispute that there are registered sale Deeds whereby defendant Nos.2 and 3 is stated to have purchased the property. Execution of sale Deed is not disputed by the plaintiff, however the case is, same has been executed by fraud and coercion and that the plaintiff has to prove the same by leading evidence at the time of trial. *Prima facie* at this stage it cannot be said that there was any element of fraud or coercion involved simply for the reason that defendant No.1 in the appellate proceedings have filed affidavit supporting the case of the plaintiff that there was no consideration which has been passed while executing the sale Deed and that defendant No. 5 is a moneylender.

9. After execution of registered sale Deed, defendant Nos. 2 and 3 had become the owners of the property and thereafter

it was up to them to deal with the properties in any manner which they have done in favour of defendant No.5. The sale transaction within period of 4-5 days by itself is not sufficient to infer that it is not a genuine transaction.

10. As far as the issue that there was no consideration which was exchanged, pertinently there is no document which is produced on record to show that after execution of sale Deed there was any notice issued to defendant Nos.2 and 3 or to defendant No.5 claiming that no consideration has been passed and that the plaintiff continuous to remain the owner of the property and is in possession of the property. It is only after a period of one and half years the suit in question came to be filed. The appellate Court after taking into consideration the material on record has held that except the affidavit that the defendant No.5 is in hurry to create third party rights, no other material has been produced to record to support the plaintiff's case seeking restraint. The execution of the registered sale Deed creates balance of convenience in favour of defendant No.5.

11. Considering the above, in my opinion there is no

warrant for interference with the concurrent findings of the trial Court and the appellate Court.

12. As such the petition stand dismissed.

SHARMILA U. DESHMUKH, J.