

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

WRIT PETITION NO.9657 OF 2018

Subhash Sitaram Kamble

..... Petitioner

Vs.

Mariappa Adiappa Chalwadi (Decd)

Through LRS.

..... Respondents

Mr. Pramod J. Pawar for the Petitioner.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 3rd JULY 2023.

P. C.

1. The petitioner is before this Court challenging the impugned order dated 8/6/2018 passed in Misc. Civil Appeal No.179/2016 confirming the order of the trial Court dated 13/3/2016 rejecting the application filed by the petitioner-plaintiff below Exhibit 5.

2. The plaintiff has filed RCS No.139/2014 claiming that although there was an agreement of registered sale Deed between the plaintiff and the defendant, consideration which was orally agreed was Rs.15 Lakhs. However, as the market value was Rs. 2

Lakhs, in the Sale Deed the consideration amount was mentioned as 2 Lakhs.

3. The trial Court as well as the appellate Court has disbelieved the case of oral contract put forward by the petitioners particularly taking into consideration the provisions of section 92 of the Evidence Act. It is not in dispute that the registered Sale Deed has been executed between the petitioner and the defendant and pursuant thereto possession has been handed over.

4. The facts of the case show that there was concluded transaction between the parties pursuant to which possession was handed over and as such the plaintiff has failed to make out *prima facie* case in his favour.

5. Considering that respondent-defendant had paid the consideration stated in the sale Deed and was put in possession, balance of convenience is in favour of defendant. In view of the concurrent findings of the trial Court and the appellate Court no case for interference is made out.

6. The petition stands dismissed.

SHARMILA U. DESHMUKH, J.