

Nikita

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

WRIT PETITION NO.1323 OF 2022

NIKITA
KAILAS
DARADE
Digitally signed by
NIKITA KAILAS
DARADE
Date: 2023.11.09
18:19:11 +0530

Sanil Balu @ Balasaheb Gangurde
& Anr.

... Petitioners

V/s.

Rajaram Janardan Gangurde and Ors.

... Respondents

Mr. Sachin S. Punde for the Petitioners.

Mr. Vivek M. Punjabi for Respondent.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 9, 2023

PC.:

1. The petitioners are original defendants in Special Civil Suit No.136 of 2020. The respondents filed suit seeking declaration that the sale deed dated 17th March 2020 executed in favour of defendant No.1 and 2 be declared as void and not binding on the plaintiff. Further injunction restraining defendants from disturbing possession of the plaintiff over the suit property was also sought.

2. The Courts below allowed the application for temporary injunction restraining defendant Nos.1 to 13 from disturbing plaintiffs possession over the suit property. The Courts below further granted injunction against the defendants from alienating or disposing of the suit property till the conclusion of the trial.

3. On perusal of the impugned order, it appears that the plaintiff claimed possession as lessee of the property. Both the Courts below based on material on record concluded prima facie that the plaintiffs are in possession of the suit property. On consideration of the impugned judgment, prima facie findings recorded by the Courts below that the plaintiffs possession in suit property need not be disturbed.

4. However, in relation to grant of relief restraining defendants from alienating or disposing of the suit property is concerned, the right pleaded by the plaintiff is that of lessee. Lessee cannot challenge transfer by title by one owner in favour of purchaser of the property. Therefore, the Courts below were not justified in granting injunction against defendants from alienating or disposing of the suit property. Hence following order.

a) The impugned order, to the extent it protects plaintiffs possession and restrains defendant No.1 to 13 from disturbing plaintiffs possession over the suit property is confirmed.

b) The impugned orders to the extent it restrains defendants from alienating or disposing of suit property till the conclusion of the trial is set aside.

5. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)