

SA Pathan

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

WRIT PETITION NO.11347 OF 2023

SHABNOOR
AYUB
PATHAN
Digitally signed by
SHABNOOR AYUB
PATHAN
Date: 2023.09.13
10:25:03 +0530

Mandabai Chagan Mandale ... Petitioner

V/s.

Sambhaji Shivaji Chavan & Ors ... Respondents

Mr. Sumedh Modak i/by Mr. Vijay Killedar, for the
Petitioner.

Mr. Kuldeep U Nikam , for the Respondent.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 12, 2023

P.C.:

1. Challenge in this writ petition is to the order passed by the Appellate Court rejecting application for temporary injunction filed by the petitioner (plaintiff) in a suit for redemption of mortgaged suit property and for relief of declaration.

2. According to the petitioner, in the year 2013, he executed a mortgage deed in favor of defendant No.1 for consideration of Rs.70,000/-; however, by practicing fraud defendant No.2 got executed sale deed of suit property on 8 November 2013. Defendant No.2 on 28 October 2015 sold the suit property in favor of defendant No.3. Defendant No.3 on 12 September 2018 sold the suit property to defendant No.4. On 27 November 2019, defendant

No.4 sold the suit property to defendant No.5.

3. The petitioner is, therefore, seeking relief of declaration that the sale deeds executed in favor of defendant Nos.2, 3, 4 & 5 be declared as not binding on the plaintiff, consequential relief of injunction is sought.

4. Learned Trial Court based on tax receipts, electricity bills and ration card granted injunction in favor of the plaintiff.

5. The Appellate Court allowed the appeal holding that the documents placed by the plaintiff in the form of water tax, property tax and electricity bills are not sufficient to draw inference that the petitioner is in actual possession in the suit property. The Appellate Court based on entry in 7 x 12 extract dated 3 March 2020 indicating name of defendant No.5 in the revenue record allowed the appeal.

6. Prima facie, it appears that the documents entitled sale deed was executed in favor of defendant No.1. Thereafter, delivered in favor of defendant No.5, there were four sale deeds executed. Ultimately, sale deed is executed in favor of defendant No.5. All sale deeds containing recitals as regards possession is delivered. Delivery of possession in registered documents carries presumption of its truth subject to evidence contrary. The plaintiff needs to establish his possession with the independent material and to displace presumption of entry in 7 x 12 extract and averments in the registered document. The material produced in the form of water tax, property tax, electricity bills and assessment is not sufficient to displace the said presumption.

7. The exercised discretion by the Appellate Court, therefore, cannot be faulted.

8. The writ petition, therefore, has no merit. However, the Trial Court is directed to decide the suit as expeditiously as possible.

(AMIT BORKAR, J.)