

Nikita

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

WRIT PETITION NO.10902 OF 2023

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Dilip Sadashiv Panhalkar ... Petitioner

V/s.

Vaishali Rajanikant Panhalkar and Ors. ... Respondents

Mrs. Anjali Neel Helekar a/w Mr. S.A. Abhyankar for
the petitioner.

Mr. Raju Suryawanshi for Respondents.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 25, 2023

P.C.:

1. The challenge in this petition is to the order passed by the Appellate Court rejecting the application for temporary injunction filed by the petitioner, restraining defendants from disturbing possession over the suit property.

2. The petitioner filed a suit seeking relief of permanent injunction based on title restraining defendant Nos.1 to 3 from disturbing plaintiffs possession over the suit property. The petitioner filed suit based on registered gift deed dated 10th September 2015. According to petitioner, possession of suit property was handed over as per recital in the registered gift deed to the petitioner.

3. The petitioner along with suit filed application for temporary injunction restraining defendants from obstructing plaintiff from receiving income out of fruit trees in the suit property. The second prayer seeking temporary injunction against the defendant Nos.1 to 3 from disturbing plaintiffs possession over the suit property. Alternatively, the petitioner prayed that if the Court comes to the conclusion that the defendant has forcefully taken possession of house property in property No.47-B, defendant Nos.1 to 3 be restrained from using the house property.

4. The Trial Court by order dated 29th August 2022 partly allowed the application for temporary injunction granting temporary injunction in terms of order dated 24th September 2021.

5. The Appellate Court by order dated 24th September 2021 had restrained defendant Nos.1 to 3 from disturbing plaintiff's possession over the suit property.

6. In an appeal filed by the defendants, the Appellate Court set aside the order of injunction and rejected the application for temporary injunction. The order of Appellate Court is subject matter of the present writ petition. On perusal of the material on record, particularly the complaint filed by the petitioner with the concerned Police Station on 8th September 2021, it appears that the petitioner stated before the concerned Police Station that defendants have illegally obtained possession of suit property though the defendants have no right to occupy the said house. The date and time of taking over forceful possession is also mentioned in the complaint. If that be so, the remedy of petitioner is

somewhere else.

7. At prima facie stage, it cannot be said that the plaintiff has proved his exclusive possession over the suit property. Hence the Lower Appellate Court was justified in rejecting the application for temporary injunction as regards the suit property.

8. Hence, no interference under Article 227 of Constitution of India is called for.

9. However considering the facts of the case, the Trial Court is directed to decide the suit within one year from today.

10. The writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)