



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7379 OF 2023

Dattatrya Alias Nana Baburao Bhore & Ors
VERSUS
Vaibhav Keshav Jogdand

- Mr. K. R. Doke, Advocate for the Petitioners
- Mr. M. U. Shelke, Advocate for the Respondent

CORAM : R.M. JOSHI, J
DATE : NOVEMBER 25, 2024

PER COURT :

1. This Petition takes exception to the order passed below Exh. 5 in RCS No. 14/2023 whereby injunction was granted against Defendants/Petitioners herein. The said order was challenged by the Petitioners by filing Misc. Civil Appeal No. 05/2023 before the District Court, Bhoom unsuccessfully.

2. Perusal of the record indicates that Petitioners had filed RCS No. 53/2022 against Subhash Mane and others for declaration and injunction. There is no dispute about the fact that the Petitioners have executed sale deed dated 13.08.2008 in favour of her son-in-law Subhash. Though now it is contended in the

said suit after about 13 years that the said document was not the document of sale, the document in question clearly indicates that the vendor i.e., Petitioners herein had handed over the possession of the subject property to the Subhash Mane. At this stage, therefore, there is registered sale deed which indicates that the title in the suit property was transferred in favour of Subhash. Subhash executed sale deed on 18.08.2021 in favour of Respondent. Since there was obstruction to his possession of the suit property, RCS No. 53/2022 came to be filed wherein injunction was granted.

3. Learned Counsel for the Petitioners submit that the mention of handing over of the possession to Subhash by the Petitioners in the sale deed executed by her is formal in nature but actual possession was never handed over to Subhash. According to him, the Trial Court as well as Appellate Court have failed to take into consideration the fact that the electricity bill in respect of the said property does not stand in the name of the Subhash or other Respondent or subsequent purchaser. It is, therefore, his submission that the order passed by the Trial Court granting injunction

deserves interference.

4. Learned Counsel for the Respondent supported the impugned orders.

5. *Prima facie* perusal of the record indicates that the Petitioners herein have sought to rely upon the affidavits filed of the adjoining owners to substantiate her possession over the suit property. On the other hand, Respondent has also filed affidavits making similar claim. In the light of these affidavits, it is only words against words of these persons and unless they are subjected to cross-examination, it cannot be said as to who is stating truth. However, there are documents on record in the form of registered sale deed indicating handing over of the possession by the Petitioners to Subhash and Subhash to Respondent herein. At this stage, therefore, it was not open for the learned Trial Court to ignore the said documents. In so far as the claim of the Petitioners about the electricity bill is concerned, the same has been dealt with by the learned Trial Court in paragraph 29 of the impugned order. The said finding of fact, at this

stage, being not perverse does not deserve interference.

6. Having regard to the aforestated facts, no case is made out for causing interference in the impugned order. In the result, Petition stands dismissed.

(R.M. JOSHI, J.)