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

WRIT PETITION NO. 3214 OF 2024

Ashok Balu Hore

.. Petitioner

Versus

Bhupal Neminath Navale

.. Respondent

-
- Mr. Bhushan Walimbe a/w. Mr. Mayank Tripathi, Advocates for Petitioner.

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CORAM : MILIND N. JADHAV, J.

DATE : JULY 01, 2024.

P.C.:

- 1.** Heard Mr. Walimbe, learned Advocate for Petitioner.
- 2.** Present Writ Petition takes exception to the impugned order passed below Exhibit “60” in Regular Civil Suit No.306 of 2019 appended at page No.72 of the Writ Petition.
- 3.** The facts in the present Writ Petition are extremely gross and are therefore required to be considered.
- 4.** Mr. Walimbe, learned Advocate for Petitioner – Plaintiff would inform the Court that Suit was filed seeking specific performance of Agreement dated 29.03.2008 under which the land was agreed to be sold. Defendant is the sole Respondent in the present Writ Petition. He would submit that under the said Agreement, it was agreed that 8.5 R. land which is the subject matter of Agreement shall

be sold to the Plaintiff and possession was handed over to the Plaintiff on that date itself. This was in view of the fact that Plaintiff had paid an amount of Rs.3,10,000/- amounting to almost 90% of the sale consideration to the Defendant.

5. After the Suit was filed in the year 2019, Exhibit “5” was allowed in favour of Plaintiff on 19.05.2020 thereby restraining Defendant from obstructing and disturbing the possession of the Plaintiff.

6. Mr. Walimbe candidly informs the Court that just before the injunction order came to be passed, Defendant created third party right in the Suit property by gifting the said property to his own son by registered gift deed dated 07.06.2019 and also simultaneously in 2020 sold the Suit property by a fresh sale deed to another third party namely ‘Julekha Kazi’.

7. He would submit that in view of the injunction order and the aforesaid development, Petitioner – Plaintiff filed Application below Order VI Rule 17 of the Code of Civil Procedure, 1908 for placing on record the details of subsequent incidents affecting the Suit property as also the Suit proceedings on record. He has drawn my attention to the impugned order dated 05.11.2022 which is appended at page No.72 of the Writ Petition and would contend that the only premise on which the said order has been passed while rejecting the Application is

that it would complicate the nature of the Suit proceedings.

8. I have perused the impugned order. An arguable case has been made out by Mr. Walimbe for issuance of notice and immediate stay of the impugned order dated 05.11.2022.

9. Hence, issue notice to the Respondent. Humdast permitted.

10. In addition to Court notice, Petitioner is permitted to serve a copy of the Writ Petition and this order on the Respondent and inform him about the next date of hearing by any permissible mode of service and file appropriate Affidavit of service with tangible proof thereof on or before the next date.

11. After receiving notice, Respondent is directed to take cognizance of this order and file their Affidavit-in-Reply on or before the next date, if so desired.

12. It is clarified that, this Writ Petition shall be disposed of on the next adjourned date at the stage of admission itself after hearing the parties.

13. Respondent is directed to remain present in Court on the next adjourned date either by himself or through Advocate.

14. In the meanwhile, the proceedings before the learned Trial Court shall stand stayed until the present Writ Petition is determined by this Court.

15. Stand over to **22nd** July, 2024.

[MILIND N. JADHAV, J.]

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