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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

APPEAL FROM ORDER NO. 14 OF 2024

**RAMESH S/O. MOHAN AADE
VERSUS
SMT. INDUTAI W/O. HIRASINGH JADHAV AND ANOTHER.**

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Mr. S.S. Thombre, Advocate for appellant.
Mr. Amit Vaidya, Advocate for respondent
Mr. S.R. Nikam, Advocate for respondent No.2.

CORAM : S.G. CHAPALGAONKAR, J.

**RESERVED ON : 20TH JANUARY , 2025.
PRONOUNCED ON : 19th MARCH, 2025.**

ORDER :-

1. The appellant/original plaintiff impugns the order dated 22.2.2024 passed by learned Civil Judge (S.D.), Aurangabad below Exh.5 in Special Civil Suit No. 493 of 2023.

2. Plaintiff contends that suit property i.e. Plot Nos. 26, 27 and 30 totally admeasuring 424 square meters alongwith RCC construction admeasuring 1237.33 square meters, is owned and possessed by him. He developed and constructed property by obtaining loan from financial institution. Suit Property includes 6 shops and 12 flats. Plaintiff runs a Girls Hostel with assistance of his wife Smt. Vimal in the suit property. Their business is duly registered. According to plaintiff, Shop Nos. 2 to 6 have been sold by him. Rest of the property is used in the business.

Respondent/Defendant No.1 is his real sister and defendant No.2 is his son. Her husband retired from Police Department. While plaintiff had cordial relations with defendants, plaintiff signed certain bond papers on say of defendant No.1. Plaintiff has sold Shop No.2 to Ajay and sold Flat No.1 to Abhijit Jadhav (defendant No.2). Defendant NO.2 failed to pay agreed consideration against purchase of flat, hence he was not put into possession. According to plaintiff, during COVID pandemic, his business was completely collapsed. He was not in position to clear municipal taxes. Hence, he made application to the Commissioner for concession. At that time Plaintiff came to know that defendants are claiming right in respect of property on the basis of fabricated Partition and Gift Deed. He received those documents under the right to information Act from the concerned Department. He never signed such documents or had no reason to execute such documents. However, defendants, in collusion with each other, created bogus and sham documents, using ante-dated bond papers and misused the signatures obtained for bank purposes. Defendants are trying to take possession of property with help of unknown persons. As such, cause of action arose on 11.6.2023. Plaintiff, therefore, instituted suit seeking relief of declaration and cancellation of partition Deed No. 1225 of 2017 dated 20.6.2017 and Gift Deed Sr. No. 19969 dated 25.10.2019 alleged to have been executed by plaintiff in favour of defendant No.1.

3. Plaintiff filed application below Exh.5 seeking relief of temporary injunction against defendants thereby restraining them from obstructing, interfering into peaceful possession of plaintiff over suit property as described in the plaint.

4. Defendants filed reply to the application contending that suit

property was jointly developed by plaintiff and defendant No.1. Plaintiff is younger brother of defendant No.1. After marriage of defendant No.1 he resided with her since his childhood. Therefore, property was purchased in the name of plaintiff by husband of defendant No.1. Then, it was developed into a three storied building with 6 shops and 4 flats. Plaintiff is neither owner, nor possessor of property except underground basement given to his share. It is their contention that by way of family arrangement and understanding between the parties, Partition Deed was executed. Plaintiff cannot claim beyond what was agreed upon.

5. Learned trial court, after considering rival submissions, concluded that plaintiff failed to make out prima facie case and held that balance of convenience lies in favour of defendants. As such, refused to grant temporary injunction.

6. Mr. S.S. Thombre, learned advocate for the appellant/plaintiff vehemently submits that trial court fell in patent error while rejecting plaintiff's application for grant of temporary injunction. He submits that evidence on record clearly depicts that Plot Nos. 26, 27 and 30 were purchased by plaintiff from respective owners under registered sale deeds during period from 1988 to 1996. Plaintiff developed suit property consisting of 6 shops and 12 flats and with the help of his wife Vimal, he runs Girls Hostel, namely, Bharti Girls Hostel and Mess. Defendants are claiming right on the basis of forged Partition and Gift Deed and they are trying to dispossess plaintiff. Hence, suit was instituted. However, trial court, without considering aforesaid aspects, refused to grant relief of temporary injunction.

7. In support of his contention, he relies upon judgment of the

Supreme Court of India in the case of ***Ramegauda vs. Verdappa Naidu (2011)1 SCC 769.***

8. Per contra, Mr. Vaidya, learned advocate for respondent No.1 submits that plaintiff is claiming injunction in respect of entire suit property which consists of three-storied building. The plaintiff accepts that he had already sold 4 shops and one flat. However, claims injunction in respect of entire suit property. He submits that family arrangement between plaintiff and defendant No.1 is clearly discernible from the partition deed and gift deed. The documents are duly notarized bearing signatures and photographs of respective parties. Allegations made in the plaint will have to be established during the course of trial. At this stage, possession of respective parties is only relevant and decisive factor. In support of his contentions, he relies upon the judgment of the Supreme Court in the matter of ***Wander Limited vs. Antox India (P) Ltd.1990 (Supp)SCC 727 and Baban Anantrao Naik vs. Pramila Uttamrao Yenare (2011) 6 All M.R. 54.***

9. During the pendency of this appeal, learned advocate Mr. Thombre, filed additional affidavit alongwith documents to bring on record subsequent events, particularly, copy of W.P. No. 6069 of 2024, filed by plaintiff seeking writ of Mandamus to cancel Gunthewari Regularization Certificate No. 606 dated 7.2.2024 issued in the name of Deputy Director of Town Planning, Gunthewari Cell and various complaints made in this regard.

10. Having considered submissions advanced, and after going through record as pressed into service before this Court, it can be observed that applicant/plaintiff instituted suit to cancel partition deed

dated 1225 of 2017 and Gift deed Sr. No. 19969 dated 25.10.2019 executed by plaintiff in favour of defendant No.1. Apparently, the existence of such documents has been admitted by plaintiff. The pleadings suggest that plaintiff wants to convey that such documents are false and fabricated and made out on the basis of old pre-signed stamp papers. The learned advocate for appellant made an endeavour to suggest that falsity of documents can be observed from bare look at the documents.

11. Pertinently, plaintiff admits that he sold out certain plots. Additional documents tendered on record suggest that he has executed sale deed of one flat in favour of Abhijit Jadhav in pursuance to the statement made before this Court in Anticipatory Bail Application NO. 1805 of 2021 and also handed over possession thereof. The aforesaid circumstances clearly depict that plaintiff is not in possession of entire suit property as described in plaint.

12. Learned advocate for plaintiff endeavours to contend that now the pursis was tendered that except plots and flat already sold out, the claim of plaintiff for grant of injunction in respect of rest of the property can be considered. Evidently, such amendment is not carried out in the plaint and application for injunction. The description of plaint as made in plaint is sought to be altered on the basis of pursis. Such procedure is not contemplated in law. There appears serious dispute amongst plaintiff and defendant No.1 who are brother and sister inter se, as regards to possession and ownership of property.

13. As observed by this court in e case of ***Baban Naik vs. Premila Yenare (supra)*** at the time of determination of application for temporary

injunction the factum of possession would only be relevant factor. Whether possession was lawful or not, would not be subject matter of inquiry and it is not possible to render the finding as to truthfulness or falsity of documents at the premature stage.

14. The trial court, while passing impugned order has observed that although plaintiff and his wife obtained loan of Rs. 32 lakhs by mortgaging plot NO. 26 in favour of financial institution, the partition deed and gift deed challenged in suit which are sought to be cancelled are arrangements much prior to obtaining of loan. Possession of property or title thereof based on family arrangement is approved in law. Whether such right is created in favour of defendants or whether impugned partition deed or gift deed are forged documents as alleged by plaintiff, requires evidence and trial. Fact remains that plaintiff is not in exclusive possession and ownership of entire property shown in plaint. Grant of temporary injunction is an equitable relief which needs to be granted to protect the status of property, as on the date of institution of suit. Further, it is trite that plaintiff has to establish prima facie case, balance of convenience and irreparable loss to him, in case of non-grant of such relief pending suit. In present case, trial court observed that plaintiff has not approached with clean hands while he claims injunction in respect of entire property, now admits that part of property is in possession of defendants. Plaintiff could not demonstrate irreparable loss to him in case of refusal to grant temporary injunction. However, if such injunction is granted, defendants in possession of part of property, may suffer an irreparable loss. On such prima facie finding, trial court refused to exercise discretion in favour of plaintiff. The Honourable Supreme Court in the case of *Ramegouda (supra)* approved concept of possessory title and held that person in possession of land in assumed character of owner

and exercising peaceably ordinary rights of ownership has perfected good title against all world but rightful owner. When facts disclose no title in either party, possession alone decides. The law presumes ownership to go with title unless rebutted.

15. The gamut of aforesaid observations is that for grant of relief under Sections 37 and 38 of the Specific Relief Act, settled possession is to be established which can be protected even against true owner without following due course of law. Aforesaid proposition would equally apply to plaintiff and defendants in present case and both would be entitled to protect possession unless better title is established.

16. It is trite that appellate court can not substitute its own opinion or discretion in appeal preferred against a discretionary order . Even appellate court will not re-assess material and seek to reach a conclusion different from one reached by court below, which based on reasonable appreciation of the material on record. Interference of appellate court is justified only when arbitrariness in decision making by trial court is seen. However, once it is observed that discretion is reasonably exercised and in a judicious manner, no interference with trial court's discretion would be possible and permissible.

17. In view of the aforesaid exposition of law by Supreme Court in case of *Wander Limited (supra)* there appears hardly any scope to interfere in the impugned order. However, in case plaintiff amends his suit appropriately and claims relief describing exact property in his possession and then seeks protection, such claim may be independently considered by trial court.

18. In the result, appeal from order stands dismissed with no orders as to costs.

[S.G. CHAPALGAONKAR, J]

grt/-