



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

11 WRIT PETITION NO. 8838 OF 2025

Afsar Hanif Khan

VERSUS

The State Of Maharashtra And Others

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Advocate for Petitioner : Mr. R.B. Dhakane

AGP for Respondent : Mr. K.B. Jadhavar

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : July 22, 2025

ORDER :-

1. The petitioner/original defendant no.3 impugns the order dated 9.5.2025 passed by the learned District Judge, Jalgaon in M.C.A. No.76 of 2022, thereby upholding the order dated 7.11.2022 passed by the Civil Judge S.D. Jalgaon below Exhibit-6 in Special Civil Suit no.156 of 2022.

2. Respondent no.2 instituted a suit i.e. Special Civil Suit No.156 of 2022 seeking relief of declaration and injunction against the defendants. It is case of plaintiff that suit property bearing gat no.27 situated at Jamner has been put into her possession by virtue of registered agreement to sale dated 14.1.2021 executed by defendant no.1. Plaintiff has already parted with consideration amount of Rs.5.00 Lakh and it was agreed that sale-deed would be executed within a period

of twelve weeks after removal of encumbrances and measuring the property. However, defendant failed to perform his part of contract. In result, plaintiff was required to issue legal notice/paper publication showing willingness to perform her part of contract, however, no steps were taken by the defendant. It is further contention of the plaintiff that defendant nos.1 and 2 during subsistence of registered agreement to sale transferred suit property in favour of defendant no.3 vide sale-deed dated 2.6.2022. According to plaintiff, such a sale-deed is not binding on her rights.

3. With these contentions, plaintiff sought order of temporary injunction. Learned Trial Court, after considering provisions of section 53-A of the Transfer of Property Act and fact that plaintiff relies on a registered agreement to sale stipulating clause of delivery of possession, granted temporary injunction against defendants. The order of Trial Court was challenged by defendant no.3 before the learned District Judge, Jalgaon in Misc Civil Appeal no.76 of 2022. The learned District Judge dismissed the appeal upholding the order passed by the Trial Court.

4. Mr. Dhakne, learned advocate appearing for the petitioner vehemently submits that petitioner/original defendant no.3 is in possession of the property in pursuance to the sale-deed executed by original owner. He would place his reliance on photographs to contend that petitioner is in actual possession of the property. He urges that without looking to the factum of possession based on evidence tendered into service, both Courts have erroneously relied upon stipulations in agreement to sale, which cannot be accepted as gospel truth.

5. Having considered the submissions advanced, it can be observed that registered agreement to sale has been executed in favour of plaintiff by the original land owner. It is a registered document. It contains clause about delivery of possession. Lateron, petitioner purchased land under registered sale-deed from original owner. Apparently, registered agreement to sale which is prior in time is not cancelled or rescinded by following due process of law. Agreement to sale specifically stipulates clause of delivery of possession in favour of the plaintiff.

6. Section 53-A of the Transfer of Property Act provides that once there is a registered document depicting transfer of possession in part performance of the contract, the

person put in possession of the property is entitled to claim protection of such possession. Learned Trial Court as well as Appellate Court both have rightly relied upon the aforesaid provisions of law while passing the impugned order.

7. Although, Mr. Dhakane, took this Court through the photographs and some other material in his endeavour to impress that petitioner is in possession of the property, all such documents needs to be proved in evidence during the course of the trial. Those are not sufficient to draw inference contrary to the stipulations in registered agreement to sale indicating plaintiff's possession.

8. In that view of the matter, when the both the courts have taken a view based on material on record and legal position as it subsists, no case is made out for interference under Article 227 of the Constitution of India. Hence, writ petition stands **rejected**. It is made clear that observations made in this order are on prima facie consideration and learned Trial Court shall not be influenced by the same while passing final order.

(S. G. CHAPALGAONKAR)
Judge

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