

Iresh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5765 OF 2017

Vijaykumar S/o Manikrao ShirsadPetitioners
and Ors

Vs.

Vithal S/o Narayan Dikonda and OrsRespondents

Mr. Yogesh D. a/w Mr. Raghvendra Kulkarni for the petitioners
Mr. Anand Kulkarni fo respondent no. 1
Mr. Ashok B. Tajane a/w Mr. Balaji P. Shinde for respondent nos.
10 to 12
Ms. Snehal S. Jadhav AGP for the respondent-State

CORAM : GAURI GODSE, J.

DATE : 30th JUNE 2025

ORDER:

1. Heard learned counsels for the parties. This petition is filed by defendant nos. 12 to 14 who claim to be purchasers from defendant nos. 9 to 11. By the impugned order, the first Appellate Court has granted injunction in favour of respondent no. 1-plaintiff restraining defendant nos. 12 to 14 i.e. present petitioners from creating any third party rights in respect of the suit property or

demolishing the suit property. By the impugned order, the parties are directed to maintain the status-quo as on the date of the order. The impugned order is dated 29th November 2016.

2. Learned counsel for the petitioners submits that the plaintiff is a complete stranger to the suit property and claims rights based on tenancy of the plaintiff's father. He submits that original tenant of the land was one Kasture and the plaintiff claims that Narayan i.e. plaintiff's father purchased the constructed area from Kasture. He submits that the plaintiff has no right, title and interest in the land and thus, the plaintiff is a complete stranger to the suit property. He submits that defendant nos.9 to 11 transferred the right, title and interest in respect of the suit property in favour of the petitioners. Hence, the Appellate Court erred in granting injunction against the owner of the property protecting the claim of a stranger to the suit property. He, therefore, submits that the impugned order would require interference by this Court.

3. Learned counsel for the plaintiff submits that the plaintiff claims right in the suit property based on a registered sale deed of 1955. He submits that the sale deed in favour of plaintiff's father is

not challenged. He, further submits that the sale deed subject matter of challenge in the suit is on the ground that it would not bind the plaintiff's share. Learned counsel for the plaintiff submits that the suit is ripe for hearing and the plaintiff's evidence is also complete. He, therefore, submits that the impugned order would not require any interference by this Court at this stage.

4. I have perused papers of the Writ Petition. The plaintiff claims to have share in the suit property through Narayan. The sale deed in favour of Narayan is produced on record. The registered document in favour of Narayan is not challenged by any party. The subsequent sale deed in favour of present petitioners is subject matter of the challenge in the suit. Thus, considering the plaintiff's right in the suit property based on a registered document in favour of Narayan, the Appellate Court found it fit to grant temporary injunction during the pendency of the suit. The plaintiff's prayer is for partition and separate possession and for a declaration that the sale deed in favour of the present petitioners would not be binding upon the plaintiff's share. When the plaintiff claim rights based on a registered

document, which is not under challenge, the nature and status of the suit property needs to be protected during the pendency of the suit. If third party rights are created or nature of the suit property is changed, the same would cause prejudice to the plaintiff's rights and would also lead to multiplicity of proceedings.

5. I do not see any illegality or perversity in the reasons recorded in the impugned order. This is not a fit case to exercise discretionary jurisdiction under Article 227 of the Constitution of India. The petition is, therefore, dismissed.

[GAURI GODSE, J.]

**IRESH
MASHAL**

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IRESH MASHAL
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