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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 24 OF 2023

Vijaykumar Mahadev Beldar

.....Petitioner

Vs.

Mr. Vinayakrao Shamrao Patil
through LRs and ors

.....Respondents

Mr. V. A. Shastry for the petitioner
Mr. Nikhil Wadikar a/w Partu Katira, Ms. Gayatri, Mr. Rushikesh
Desai i/b Nandu Pawar for respondent nos. 3 and 4

CORAM : GAURI GODSE, J.

DATE : 30th JUNE 2025

ORDER:

1. This petition is filed by the original plaintiff to challenge the Judgment and Order passed by both the Courts rejecting his application seeking temporary injunction restraining the respondents from creating third party rights and from disturbing the plaintiff's possession. This interim application is filed in a suit of 2017 for specific performance of an agreement dated 13th January 1999.

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2. Learned counsel for the petitioner submits that respondent nos. 1 and 2 are the original owners who executed the suit agreement in favour of the plaintiff and defendant no. 4. Defendant no. 4 and the plaintiff are real brothers and defendant no. 3 is the son of defendant no. 4. He submits that the suit agreement clearly records that the possession was handed over to the plaintiff and defendant no. 4. However, subsequently, the sale deed dated 26th September 2005 was executed only in favour of defendant nos. 3 and 4. He submits that the plaintiff was in joint possession with defendant no. 4 based on the suit agreement of the year 1999. He, thus, submits that based on a subsequent sale deed, the defendants would not be entitled to disturb the plaintiff's possession. He submits that apart from the specific clause in the agreement relied upon by the plaintiff, he also filed an affidavit of an independent witness to support his contention that he was in possession and cultivation of the suit property. He, thus, submits that based on the prima facie evidence in favour of the plaintiff, he would be entitled to temporary injunction as prayed. He submits that both the Courts have failed to take into consideration the clause in the agreement in favour of the plaintiff and the

supporting evidence of the independent witness.

3. Learned counsel appearing for respondent nos. 3 and 4 supports the impugned orders. He submits that prior to the sale deed executed in favour of respondent nos. 3 and 4, the revenue record stood in the name of original owner i.e. respondent no. 1. He submits that after execution of the sale deed, since the year 2008-2009 the revenue record is in the name of defendant nos. 3 and 4. He, thus, submits that prima facie evidence on record supports the case of defendants that before execution of the sale deed, the possession was with respondent nos. 1 and 2 and after execution of the sale deed, defendant nos. 3 and 4 are in possession of the suit property. He submits that the suit is filed at a belated stage and thus, the plaintiff would not be entitled to any discretionary relief of injunction.

4. I have perused the papers of the Writ Petition. The sale deed in favour of defendant nos. 3 and 4 challenged in the suit of 2017 is of the year 2005. The agreement based on which the plaintiff claims to be in possession is of the year 1999. Apart from the clause in the agreement and the supporting evidence by way

of an affidavit, the plaintiff was unable to produce on record any material to show that the plaintiff was in possession of the suit property either independently or jointly with defendant nos. 3 and 4. The claim of specific performance of an agreement of 1999 is sought to be enforced only in the year 2017. Defendant nos. 3 and 4 are the owners based on the sale deed of 26th September 2005 which is also for the first time challenged in the suit in the year 2017.

5. Both the Courts have considered the title of the property and the revenue record to disbelieve the plaintiff's contention of being in possession of the suit property. Thus, for want of any prima facie evidence in favour of the plaintiff regarding the claim of possession, both the Courts have refused to grant any injunction to protect the possession. So far as the prayer for not to create third party rights is concerned, considering the delay in filing the suit and the sale deed of the year 2005 in favour of defendant nos. 3 and 4, the reasons recorded by both the Courts refusing to grant the discretionary and equitable relief cannot be faulted. I do not see any illegality or perversity in the reasons recorded in the

impugned Judgments Orders.

6. The petition is devoid of any merit. Hence, the petition is dismissed.

[GAURI GODSE, J.]