IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7255 OF 2024

Kapil s/o. Manibhai Patel
and another ..Petitioners

Vs.

Jayantilal Veljibhai Patel
and another ..Respondents

Mr.S.S.Dambe, advocate for petitioners
Mr.N.T.Tribhuwan, Advocate for respondent no.2

CORAM : AJIT B. KADETHANKAR, J.
DATE : OCTOBER 29, 2026

ORDER :-

The petitioners carry a consecutive order of injunction against them. The suit was filed by respondent no.1 against his step-brother and transferee to whom the step-brother has transferred the suit property. The theory of petitioners, i.e. purchasers before the trial court was that they were *bona fide* purchasers of the suit properties from defendant no.1. They submit that their title is derived by a registered sale deed. In view of that, it is their contention that as per the recitals of the sale deeds, they were in possession of the suit properties and for that no injunction could be clamped against them.

2. After hearing the parties, the trial court ordered that defendant no.1 has transferred those properties on the basis of a title purportedly received on the basis of an unregistered gift deed. Thus the trial court found that the plaintiff could made out a *prima facie* case for seeking protection under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure ("C.P.C.", for brevity). The injunction order was taken in challenge by the petitioners before the first appellate court. After hearing the parties the first appellate court did not find any illegality or infirmity in the observations recorded by the trial court. Thus the petitioners are before this court.

3. I have heard Mr.Dambe, learned advocate for the petitioners extensively. Perused the record. Apparently, since May, 2023 the petitioners are suffering the prohibitory order passed by the trial court and confirmed by the first appellate court. At this juncture, it would not be appropriate to disturb those findings unless substantial defect is shown in the findings recorded by the trial court as also by the first appellate court. After going through the text of both the orders passed by the trial court and the first appellate court, I do not find any infirmity in those findings.

4. At this juncture, Mr.Dambe, learned advocate seeks leave to withdraw the Writ Petition with liberty to agitate all his contentions before the trial court during the trial. His apprehension as he expresses is that the trial court may be influenced by the observations made by it and the first appellate court while deciding the temporary injunction application and the appeal respectively.

5. Leave granted. The Writ Petition stands disposed of as withdrawn. It is clarified that the trial court shall not be influenced by any observations recorded by it as also the first appellate court, made while allowing the temporary injunction application and dismissing the appeal respectively. All contentions are kept open.

[AJIT B. KADETHANKAR, J.]

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