

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPEAL FROM ORDER NO. 2 OF 2015

WITH

C.A. NO. 732/2015 IN A.O. NO. 2 OF 2015

**(Pandurang Vasantrao Lolge Vs. Ashok Vasantrao Lolge and
others)**

Mr. H.V. Tungar, Advocate for the appellant/applicant
Mr. R.T. Deshmukh, Advocate for respondent No.1
The name of respondent No. 2 is deleted as per order
dated 21.01.2015

CORAM : M.T. JOSHI, J.

DATE : 31/03/2015

ORAL ORDER :

1. Heard both sides.
2. Instead of hearing application for stay, the appeal itself is admitted and heard, with consent of learned counsel for the parties.
3. The facts on record would show that the respondent No. 1 has filed the suit for partition and separate possession of the suit lands. So far as present appellant i.e. original defendant No. 3 is concerned, the suit property is the land gat No. 9 of village Aher-Nimgaon, District Beed. On the application

of respondent No.1, temporary injunction is clamped against the present appellant, restraining him from alienating the suit land. Admittedly, the suit land was purchased in the name of the present appellant when he was minor.

4. Mr. H.V. Tungar, learned counsel for the appellant submits that another property was purchased in the name of the present respondent No.1 when he was minor. He has, however, sold it when he became major. A copy of the mutation entry in this regard is filed on record. The learned trial court clamped injunction against the present appellant restraining him from alienating the suit land i.e. land gat no. 9, which is in his possession.

5. Taking into account all the facts on record, in my view, there was no need to clamp injunction as the provisions of section 52 of the Transfer of Property Act i.e. the principle of *lis pendence* would take care of the rights, if any, of the respondent No.1, in the facts and circumstances of the case. Hence, the following order:-

6. The appeal from order is hereby allowed. The impugned order is set aside. Instead, the application (Exhibit-38) in Special Civil Suit No. 37/2010 is dismissed without any order as to costs.

7. In view of disposal of appeal from order, civil application No. 732/2015 does not survive and hence stands disposed of.

[M.T. JOSHI]
JUDGE

npj/ao2-2015