

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

APPEAL FROM ORDER NO. 33 OF 2014

Hanumant Rama Bhojane
and another

.. Appellants

Versus

Bharat Babu Gaikwad

.. Respondent

Shri Prashant K. Deshmukh, Advocate for Appellants.

CORAM : S. V. GANGAPURWALA, J.

DATE : 15TH SEPTEMBER, 2015.

PER COURT :

. The respondent/plaintiff filed suit for declaration and injunction. The said suit is dismissed. Aggrieved thereby plaintiff filed an appeal before the District Court along with an application for injunction restraining the defendants from alienating, creating third party interest in the suit property during the pendency of appeal. The said application is allowed. Aggrieved thereby present appeal from order is filed by the original defendants.

2. Mr. Deshmukh, the learned counsel states that, during the pendency of suit there was no such injunction as clamped by the appellate Court. When during the pendency of suit, there was no

injunction in favour of plaintiff, the Appellate Court could not have passed injunction order against the defendants. According to the learned counsel the Trial Court after appreciation of evidence has held that the plaintiff has failed to prove his title and possession over the suit property. The learned counsel submits that, already sale deed is executed in favour of the appellant No. 1 and the ownership rights of the appellant cannot be curtailed by such an injunction order.

3. The order of injunction which is assailed is passed on 07th December, 2013. The same is in force till today. The appeal is also of the year 2013. Considering the fact that, said order is in force for almost two years, so also considering the reasons given by the appellate Court i. e. manner in which sale deed came to be executed on 19.12.2007 in favour of the appellant No. 1, I am not inclined to interfere with the plausible discretion exercised by the Appellate Court.

4. Considering the above, appeal from order is disposed of. No costs.

[S. V. GANGAPURWALA, J.]