

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

**APEAL FROM ORDER NO. 63 OF 2015
WITH CA/7489/2015 IN AO/63/2015**

**KALYAN MALHARRAO SAPKAL
VERSUS
NATHA RAMA SHINDE AND OTHERS**

...
Advocate for Petitioner : Mr. Tungar Hrishikesh V
Advocate for Respondents 1 and 2 : Mr. Dhananjay Deshpande

...
CORAM : S. V. GANGAPURWALA, J.

DATE : 1st September, 2015

PER COURT :

1. Aggrieved by the order of temporary injunction passed by the appellate Court, the original defendant No.1 has approached this Court.
2. Mr. Tungar, the learned counsel for the appellant strenuously contends that the original plaintiff is not in possession of the suit property, still injunction is granted by the appellate Court in his favour. Even the trial Court had rejected the prayer for temporary injunction while passing the final decree in respect of whole of the land. The injunction was granted only in respect of part of the land. However, the appellate Court has granted temporary injunction for whole of the suit property which is incorrect. The learned counsel submits that when the plaintiff is not in possession of the whole suit property, the plaintiff is not entitled for injunction.
3. Mr. Deshpande, the learned counsel for the respondents supports the order and submits that the District Court has considered all the aspects of the matter and even during pendency of the suit, the injunction order was in force.

4. I have considered the submissions.

5. The court, while passing the order of temporary injunction, has considered the factum of actual physical possession. No doubt, the said observations made by the appellate Court while deciding temporary injunction application would be only prima facie in nature. Naturally, the appeal would be decided after scanning the whole evidence on record. During the pendency of the suit also, the order of injunction was operating in favour of the plaintiff in respect of the suit property. In the light of the above, the appeal from order is disposed of.

6. Considering the fact that the parties are litigating since the year 1982, the appellate court shall endeavour to dispose of the appeal expeditiously, preferably within one year. In case the paper book is not ready, the present appellant shall file private paper book within a period of six weeks with the District Court.

7. Civil Application also stands disposed of.

(S. V. GANGAPURWALA, J.)

JPC