

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPEAL FROM ORDER NO. 67 OF 2014

Vitthal s/o Gangadhar Bandewar and
another

Appellants

V E R S U S

Gangadhar s/o Dattatraya Bandewar
and others

Respondents

Mr. P.R. Katneshwarkar, Advocate for the appellants
Mr.Vivek Bhavthankar, Advocate for respondent no.1
Mr. S.R. Deshpande, Advocate for respondent nos.2 and 3

CORAM : M.T. JOSHI, J.

DATE : 24TH APRIL, 2015

PER COURT :

1. Heard both sides.

2. Aggrieved by the injunction clamped on the present appellants restraining them from carrying on the construction on the suit properties, the present appeal is preferred.

3. Respondent no.1 Gangadhar s/o Dattatraya Bandewar is father of the present appellants and respondent nos.2 and 3. According to the plaintiff, in fact the suit property is not partitioned at any

time. Certain property was required in the name of present appellants to raise loan and registered document was executed. Therefore, a document was fraudulently got executed from the plaintiff. They went on to carry construction on the suit property, and therefore, the suit was filed, in which the injunction was asked for.

4. The present appellant no.1 contested the application. He submitted that the suit is filed in collusion with daughters of the plaintiff. The suit property is the ancestral property. The regular partition was effected between father and sons. Even the plaintiff's wife i.e. mother of other parties has given consent for execution of the registered partition deed and since more than 20 years, they are in possession and the application was opposed.

5. The learned Joint Civil Judge, Senior Division, found that there is corroboration to the case of plaintiff that the documents were asked to be executed. In the circumstances, during pendency of the suit, the injunction came to be granted.

6. Mr. P.R. Katneshwar, learned counsel for the appellants submitted that the part of the house property situated in the suit property is very old and for the family of the appellants, there is need to reconstruct the same. The appellants do not intend to

alienate any of the suit property. In the circumstances, he submits that the appellants are ready to execute an undertaking that in case decree is passed in their favour, they would not claim equity regarding development made.

7. On the other hand, learned counsel Mr. Vivek Bhavthankar, appearing for respondent no.1 opposed the submissions. He submitted that the very nature of the document would show that due to the old age only, as the appellants-sons prevailed upon the respondent no.1 to execute the inequitable document to facilitate loan proposal of the appellants with a bank. He further submits that therefore, instead of setting aside the order of injunction granted by the learned trial Court, the suit itself be expedited.

8. Upon considering the rival submissions, in my view since the house is already constructed on the suit property, there is no need to vacate the injunction order. Therefore, the following order.

O R D E R

a] The appeal is dismissed without any order as to costs.

b] The learned trial Court is directed to expedite the hearing of the suit and decide the same within a period of one year.

 In view of disposal of Appeal From Order No. 67 of 2014, Civil Application No.6992 of 2014 does not survive and stands disposed of.

(M.T. JOSHI, J.)

SRM/24/4/2015