

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

**APPEAL FROM ORDER NO. 40 OF 2014
WITH
CIVIL APPLICATION NO. 14871 OF 2013**

Suresh s/o Dagadu Shengule

... Appellant

VERSUS

Dagadu S/o Parasram Shengule & Ors.

... Respondents

.....

Mr S. B. Solanke, Advocate for the appellant
Mr A. S. Barlota, Advocate for respondents No. 4 & 8

.....

CORAM : **S. V. GANGAPURWALA, J.**
DATE : **3RD SEPTEMBER, 2015.**

PER COURT:

. The application for appointment of Court receiver is rejected. Mr Solanke, learned Counsel for the appellant strenuously contends that the suit is filed for partition and separate possession. In order to prevent damage and waste to the property, the appointment of Court receiver has become essential. The respondents are trying to encumber and alienate the property. As such, the receiver be appointed to protect the rights of the plaintiffs in case decree is eventually passed in their favour. The Court has not properly appreciated the provisions of Order XL Rule 1(d) of CPC in its right perspective.

2. I have heard the learned Counsel for the respondent also.

3. Appointment of Court receiver is one of the harshest remedies ever provided by the Code. The suit filed is for partition and

separate possession. In case the appellant succeeds, he would be entitled for *mesne* profit. It is submitted that the application seeking injunction restraining the respondents from alienating and creating third party interest in the suit property is rejected. Even the transfer made during the pendency of the suit would be hit by the principle of *lis pendens*. It is also submitted that now the suit is fixed for evidence.

4. Considering all the aforesaid aspects, I am not inclined to interfere with the order passed by the Court below. The appeal from order as such is disposed of with no order as to costs. The trial Court shall endeavour to dispose of the suit expeditiously.

5. In view of disposal of appeal from order, connected civil application no more survives and same stands disposed of.

[S. V. GANGAPURWALA, J.]

sgp