

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

APEAL FROM ORDER NO. 8 OF 2014

ENGILSH BHIMRAO TAWASE

VERSUS

ASHOK GANPATRAO BIRAJDAR AND ORS

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Advocate for Petitioner : Mr. Kulkarni Sunil A.

Advocate for Respondents : Mr. V. D. Gunale

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CORAM : S. V. GANGAPURWALA, J.

DATE : 19th August, 2015

PER COURT :

1. Mr. Kulkarni, the learned counsel for the appellant strenuously contend that the trial court and lower appellate Court failed to consider the mutation entry i.e. Ferfar No.375 which clearly shows the ownership of present appellant. When the earlier suit was filed, the appellant was minor aged 3 years. The respondents are claiming on the basis of registered sale deed, allegedly executed by the father of the appellant who had no right, title or interest in the said property as the present appellant, minor was exclusive owner of the same. This aspect is not considered by the Trial Court nor by the lower appellate court while passing the impugned order.

2. Mr. Gunale, the learned counsel for the respondents supports the orders passed by the learned appellate Court.

3. We have considered the submissions advanced by the learned counsel for the respective parties.

4. This court, at this stage would only consider prima facie case. The trial Court has decreed the suit partly. In respect of the claim which is disallowed, the present appellant has already filed regular civil appeal before the appellate court. Temporary injunction application is rejected.

5. It is for the appellate court to consider all the pros and cons of the matter and the contentions of the appellant about the right, title and interest of his father so also the effect of the earlier suit filed by the respondents bearing RCS No.121/78. Suffice is to state that there is no order of injunction for more than three years. The appeal also may be ripe for hearing.

6. Needless to state that whatever observations made by the Courts below at this stage would be only prima facie in nature. The appellate Court would decide the suit on its own merit, on the basis pleadings, evidences and the submissions.

7. In the light of above, the Lower Appellate Court shall decide the Regular Civil Appeal bearing No. 3/2013 expeditiously preferably within 9 months. In case the paper book is not ready, then the appellant shall file private paper book within a period of 6 weeks from today.

8. The appeal from order is accordingly disposed of. No costs.

(S. V. GANGAPURWALA, J.)