

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

**APEAL FROM ORDER NO. 123 OF 2013
WITH WP/3335/2004 WITH CA/3628/2005 IN WP/3335/2004**

**JITENDRA PRABHAKAR SHINDE AND OTHER
VERSUS
KUSUMBAI NARHARI KULKARNI AND OTHERS**

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Advocate for Petitioners : Nagode D.G.
Advocate for Respondents : V.S. Bedre, Adv. For R/1 & 5
R/8a To 8e Deleted Vide Courts Order Dtd. 13/03/14

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CORAM : S.V.GANGAPURWALA,J.

DATED : 15TH OCTOBER, 2015

ORDER :-

Mr.Nagode, learned counsel for appellants submits that the present appellants are the original defendants. The present respondents had filed Suit for declaration and injunction. The trial Court dismissed the Suit. The plaintiff filed appeal before District Court. During the pendency of the Appeal, the plaintiff filed an application for temporary injunction. The same is allowed. The learned counsel submits that during the pendency of the Suit, that is since the year 2000 till the passing of the impugned order, there was no order of injunction in favour of the respondents and as against present appellant. The learned counsel submits that for the first time, the appellate court has clamped injunction against the defendants that too after dismissal of the Suit on merits. The learned counsel submits that there is no iota of evidence to hold that the plaintiffs are in possession of the Suit property. The learned counsel submits that even witnesses of the plaintiff have admitted that the present defendant is in possession of the Suit property. According to the

learned counsel, the defendants are in possession of the suit property since long. The appellate Court for the first time could not have clamped injunction against the defendants that too after dismissal of the Suit on merits.

2] Mr.Bedre, learned counsel submits that plaintiffs are owners and possessors of the Suit property. The trial Court has not appreciated the evidence on record in its correct perspective. The appellate Court has rightly considered the factum of possession and has clamped injunction. Even mutation entry in favour of the defendants would not give them title. The same was subject to the decision in the civil suit which is meant for fiscal purpose.

3] With the assistance of learned counsel, I have gone through the order. It is a fact that during pendency of the Suit order of injunction was not in force and for the first time, appellate Court has clamped injunction against defendants that too after dismissal of the Suit on merits. Ofcourse, the finding given by the trial Court is required to be considered by the appellate Court independently on reappraisal of the evidence which the appellate court would do at the time of final hearing. Considering the fact that there was no order of injunction in force during the pendency of the suit and that the suit has been dismissed after adducing evidence, it would be appropriate for the parties to maintain Status-quo till disposal of appeal.

4] In the result, I pass following order :

The parties shall maintain status-quo in respect of the suit property. In case paper book is not filed, the appellant in Regular Civil Appeal shall file it within six weeks from today and the appellate Court shall endeavour to dispose of the said appeal expeditiously

preferably within six months. Appeal from Order accordingly disposed of. No costs.

[S.V.GANGAPURWALA,J.]

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