

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

APPEAL FROM ORDER NO. 109 OF 2013

Juber S/o Amanulla Motiwala .. Appellant

Versus

Somnath S/o Bhaurao Shinde
and another .. Respondents

Shri Rahul B. Bagul, Advocate for the Appellant.

**CORAM : S. V. GANGAPURWALA, J.
DATE : 02ND SEPTEMBER, 2015.**

PER COURT :

. The respondents/plaintiffs have filed suit for declaration and injunction. The present petitioner/defendant has filed counter claim seeking relief of specific performance. The plaintiffs filed an application for temporary injunction. The said application is allowed. Aggrieved thereby the defendant has filed present appeal.

2. Mr. Bagul, the learned counsel for the appellant strenuously contends that, the Court below has failed to consider the agreement of sale executed in favour of the present appellant. The recitals of agreement of sale also depict the same. According to the learned counsel said document clearly shows that the present appellant is in possession of the property. All these documents are not considered and only on the basis of entry in the revenue record, the

Trial Court has allowed the application of plaintiffs for temporary injunction. The learned counsel submits that, the execution of agreement is undisputed fact. The said aspect ought to have been considered.

3. I have considered the submissions. The order of injunction is in force since September 2013.

4. The Trial Court while passing order has considered prima facie case about the compliance of agreement of the year 2004. The Court has also considered the 7/12 extract. The 7/12 extract shows names of plaintiffs in possession column and also on affidavit the said fact is affirmed. The Appellate Court would be loath in interfering with the discretion exercised by the Trial Court, unless it is shown that the discretion exercised is arbitrary and perverse. The Trial Court has arrived at plausible conclusion. As such, no case for interference is made out. The appeal from order is disposed of. No costs.

5. Needless to state that, the Trial Court shall decide the suit expeditiously, on its own merits and in accordance with the evidence led by parties before it and dehors the observations made at the time of deciding the application for temporary injunction.

[S. V. GANGAPURWALA, J.]