

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9499 OF 2013

Dr. Makrand Suryakant Vyavhare
and anr.

..PETITIONERS

VERSUS

Madhukar Dattatraya Panpatte
and ors.

..RESPONDENTS

Mr Vivek Bhavthankar, Advocate for petitioners;
Mr A.D. Kasliwal, Advocate for respondents

CORAM : N.W. SAMBRE, J.

DATE : 3rd March, 2015

ORAL ORDER :

Heard learned Counsel for the parties.

2. By this petition, the petitioners/original plaintiffs seek to challenge the order dated 26th July, 2013, passed by District Judge-1, Hingoli, in Misc. Civil Appeal No.30 of 2012, whereby the order dated 22nd October, 2012, passed by Joint Civil Judge Junior Division, Kalamnuri, below Exh.5, in Regular Civil Suit No.123 of 2012, came to be confirmed.

3. Perusal of the order passed by District Judge-1 reflects that though the points for determination were framed while dealing with the appeal against an order of refusal of injunction, the only count on which the

appeal came to be dismissed is that possession over the suit property was not disclosed. Shelter is taken for the same in view of the oral agreement/transaction dated 23rd May, 2010.

4. Least that was expected of the learned Lower Appellate Court was to analyze the entire set of evidence and the pleadings in support thereof and to record a finding as regards the *prima facie* case, balance of convenience and irreparable loss. Since these aspects are absent in the order passed by the Lower Appellate Court, in my opinion, the said order amounts to a non-speaking order.

5. Non-consideration of the facts and the evidence while dealing with an appeal in relation to deciding the question of grant or rejection of temporary injunction amounts to denial of hearing. In view thereof the order dated 26th July, 2013, passed by the learned Lower Appellate Court is not sustainable and, therefore, deserves to be quashed and set aside.

6. In the result, writ petition is partly allowed.

The order dated 26th July, 2013, passed by District Judge-1, Hingoli, in Misc. Civil Appeal No.30 of 2012, is quashed and set aside and Misc. Civil Appeal No.30 of 2012 stands restored to his file.

Learned District Judge-1, Hingoli, is directed to decide Misc. Civil Appeal No.30 of 2012 within a period of two months from the date of appearance of the parties before it.

Parties to the petition undertake to appear before District Judge-1, Hingoli on 23rd March, 2015.

There shall be status quo as regards possession of the suit property till the decision of Misc. Civil Appeal No.30 of 2012.

In the circumstances, there shall be no order as to costs.

(N.W. SAMBRE, J.)

amj