

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CIVIL APPLICATION (CAF) NO.293 OF 2015 IN F.A.NO.82 OF 2015.

Zumbarlal Shrikisan Jajoo ..vs.. Balkisan Shrikisan Jajoo and ors.

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

 Mr.Joshi Adv. h/f Mr.A.A.Naik, Adv. for the
 applicant/appellant.
 Mr.M.P.Khajanchi, Adv. for the resp.1 and 2.

**CORAM : B.P.DHARMADHIKARI AND
 P.N.DESHMUKH, JJ.**

DATED : AUGUST 31, 2015.

First Appeal No.82 of 2015 is already admitted by this Court on 8th of April, 2015. Application was considered on that day and in the light of arguments advanced, parties were directed to maintain *status quo*. Said application is now placed for further orders. Respondent nos.1 and 2, who are Caveators, had filed reply that time and were heard. Respondent no.3 has been served subsequently.

The arguments as noted in order dated 8th of April, 2015 are advanced. In addition, Advocate Khajanchi submits that material on record does not make out a case for seeking such relief and facts do not show that the procedure as contemplated under Section 52 of Transfer of Property Act is inadequate to safeguard the interest of applicant. He has placed reliance upon judgments which are looked into by learned Single Judge of this Court in judgment reported in **2010(5) Mh.L.J. 903** (*Kachhi Properties, Satara ..vs.. Ganpatrao Shankarrao Kadam and ors*). He therefore reiterated request which has been recorded in paragraph no.6 in order dated 8th of April, 2015.

According to Advocate Joshi, Will has not been proved at all and only person i.e. respondent no.1 who could have said something in relation thereto, though sought appointment of Commissioner for

recording his evidence nultimately avoided to do so. He states that there are material variations in certified copy of Will and the copy available with the office of Registrar. Index II entries do not mention names of attesting witnesses in the register but while issuing certified copy thereof, in certified copy names of attesting witnesses have been added. According to him, if Will is discarded, the suit as instituted will be decreed.

Advocate Shri Khajanchi disputes this.

We do not find it necessary to go into niceties at this stage. The suit for partition filed on 7th of December, 2012 has been decided on 29th of December, 2014 and during pendency of suit interim injunction was operating. This court has continued that order further on 8th of April, 2015.

In this situation it will be in the interest of justice to expedite hearing of appeal and to continue the interim orders during its pendency.

Accordingly, hearing of First Appeal No.82 of 2015 is expedited. Appellant to file a private paper-book within six weeks from today.

Interim orders granted on 8th of April, 2015 to continue. However, respondents are given liberty to move for its vacation if occasion therefor arises.

Civil Application (CAF) No.293 of 2015 stands disposed of.

As respondent no.1 is senior citizen, liberty to move for grant of date of hearing after paper-book is filed.

JUDGE

JUDGE

Chute.