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

AO No. 26 of 2015
Shamrao v. Omkar 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 Suresh Dhole, Adv for appellant
 Mr P. D. Thakre, adv for R-1
 Mr M. B. Naidu, Adv for respdt no.2
 Respondents no. 3 and 4 served

CORAM : A. P. BHANGALE, J

DATED : 15th July 2015

1. Heard learned counsel for the parties at length. What is challenged in this appeal is common order dated 31.1.2015 passed by the Civil Judge, Senior Division, Nagpur in Special CS No. 914 of 2011 below exhibits 32 and 35.

2. It is *prima facie* revealed that father of plaintiff sold suit field to defendant no. 1 vide sale deed dated 9.9.1970 and defendant no. 1 sold that field to defendant no. 2 by registered sale deed dated 6.4.2010. Defendant no. 2 claims that he is in cultivating possession of suit field by virtue of sale deed in his favour executed by defendant no. 1.

3. Appellant/plaintiff has filed suit for declaration that both the above-referred sale deeds are null and void. Learned trial Judge has *prima facie*

found that defendant no. 2 is in cultivating possession of suit field and he has purchased suit field for valuable consideration of Rs. 26 lacs. Question whether sale deed of the year 1970 is after partition and plaintiff's father had no authority in law to alienate it in favour of defendant no. 1 will have to be decided on merits of the suit. Question of limitation is also involved in the suit. Learned trial Judge has rightly rejected application of appellant/plaintiff and allowed application of defendant no. 2 for grant of temporary injunction. No interference is called for in the impugned order.

4. In the result, appeal is dismissed. No costs. Learned trial Court shall decide suit on merit as early as possible and preferably within six months from today.

JUDGE

joshi