

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

APPEAL AGAINST ORDER NO.132 OF 2014

Harihar S/o Laxmanrao Gugilwar

-vs-

Dr Fanidhar S/o Laxmanrao Gugilwar & Anr.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri R. R. Vyas, Advocate for appellant.

Shri S. S. Shingane, Advocate for respondents.

CORAM : A.S.CHANDURKAR, J.

DATE : APRIL 10, 2015

This appeal takes exception to the order dated 17/07/2014 passed below Exhibit-62 rejecting said application in which prayer was made to restrain the defendant No.2 from making any construction over the suit property.

The appellant is the original plaintiff who had filed suit for challenging the sale-deed executed by the defendant No.1 in favour of defendant No.2. In said suit, initially application below Exhibit-5 was moved seeking to restrain the defendants from creating third party interests and also restraining the defendant No.2 from making any construction. Same application came to be partly allowed on 03/12/2011. The prayer for restraining the defendant No.2 to stop the construction being made on the suit property came to be refused. Subsequently plaintiff moved another application vide Exhibit-62 making similar prayer and by the impugned order, said application has been rejected.

Considering the fact that earlier application making similar relief had been rejected by order dated

03/12/2011 and the same was not challenged, it was not open for the plaintiff to have sought similar relief in the subsequent application. In any event, construction as made was always subject to final outcome of the suit. Hence no interference is call for in the appeal.

However, considering the age of the plaintiff, which is stated to be 75 years and the fact that the suit is at the stage of recording evidence, the proceedings before the trial Court are expedited and the trial Court shall take efforts to decide the suit finally by the end of December 2015.

A.O. stands disposed of in aforesaid terms.

JUDGE