

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

**Appeal from Order No. 42 of 2014**

Ramlal S/o. Zumberlal Rakha. .. **Appellant.**

**Versus**

Umedlal S/o Zumberlal Rakha  
And Others. .. **Respondents.**

-----

Shri. P.K. Lakhotia, Advocate, holding for Shri. B.R. Loya,  
Advocate, for appellant.

Shri. S.M. Godsay, Advocate, for respondent Nos.1 to 4.

-----

**CORAM: T.V. NALAWADE, J.**

**DATE : 29<sup>th</sup> JANUARY 2016**

**ORDER:**

1) The appeal is filed against the order made on Exhibit 5 of Regular Civil Appeal No.61 of 2013. The appeal is pending in District Court Ambajogai and the application filed for relief of temporary injunction by the appellant, plaintiff is rejected. Both the sides are heard.

2) The suit was filed by present appellant in respect of immovable property and particularly the

business of saw mill. He has claimed relief of declaration that he is owner of the suit property and he had prayed for relief of injunction against the defendants. The defendants are his real brothers. The defendants contested the suit and they contended that they have 1/5th share in the suit property.

3) The submissions made show that relief of temporary injunction was granted by the trial Court and that was in existence till the decision of the suit. The suit is dismissed by the trial Court by holding that it is joint Hindu family property and each brother has 1/5th share in the suit property. It was submitted by learned counsel for the present appellant that as the licence of saw mill is obtained by the present appellant, plaintiff and he has been running the business since many years, relief of temporary injunction could have been granted by the District Court. He placed reliance on a case reported as **AIR 2004 SC 4609 (Rame Gowda v. M. Varadappa Naidu)**. This Court has carefully gone through the facts of the reported case. The facts were totally different. In the present case there is finding of civil Court given on merits

that the suit property belongs to 5 brothers and it is joint Hindu family property and each one has 1/5th share. Thus there is finding that five brothers have 1/5th share in the suit property. As the property is of five brothers who are Hindu and it is in their joint possession, one member, brother, cannot prevent the others from enjoying the suit property. In the past, when there was no evidence relief of temporary junction was given but now there is finding of aforesaid nature against the plaintiff. In view of these circumstances, this Court holds that it is not possible to interfere in the order made by the learned District Judge Ambajogai.

4) In the result, the appeal stands dismissed. On the request made by the learned counsel for appellant, direction is hereby given to the District Court to expeditiously dispose of the appeal and in any case within the period of six months from the receipt of the order provided the appellant cooperates.

Sd/-  
**(T.V. NALAWADE, J. )**

rs1