

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

APPEAL FROM ORDER NO. 84 OF 2015

Sharad Sambhaji Bagul & ors. .. Appellants
Versus
Babu Arjuna Bagul (since deceased) .. Respondents
through his LRs.

WITH

**CIVIL APPLICATION NO. 11882 OF 2015
CIVIL APPLICATION NO. 15573 OF 2015**

Mr.R.N. Dhorde, Sr. Counsel i/b. Mr. V.R. Dhorde, Advocate
for the appellants.

Mr.V.J. Dixit, Sr. Counsel i/b. Mr. S.B. Ghatol Patil,
Advocate for respondent No.37.

Mr. K.N. Shermale, Advocate for respondent Nos.30 to 36.

**CORAM : A.V.NIRGUDE, J
RESERVED ON : 31.08.2016
PRONOUNCED ON : 23.09.2016**

O R D E R :-

1. This appeal from order arises from order dated 5th August, 2015 passed by the learned Civil Judge, Senior Division, Sangamber, rejecting an application seeking temporary injunction in Special Civil Suit No.27 of 2013. The appellants were original plaintiffs.

2. The facts leading to this litigation, in short, can be stated as under :-

3. The suit property is an Inam land, originally awarded to eight different families, whose surname is Bagul. They alleged that no partition took place between various

branches of the family and thus they have undivided share in all the lands. Gat No.15 is the land in question. It is their case that they have $1/8^{\text{th}}$ undivided share in this land. They alleged that without their consent certain defendants sold this land to original defendant Nos.37, 38 & 39 before July, 2013. They asserted that pending the disposal of the suit, defendant Nos.37 to 39 should be prevented from developing the land. During the pendency of the suit, there was no prohibitory order and so the defendant Nos. 37 to 39 started development on the land. They proposed a sugar factory on this land.

4. The defendants opposed this application asserting inter alia that land Gat No.15 fell to the share of the vendors of defendant Nos.37 to 39 long back. The learned Judge of the Lower Court examined the title of the vendors and almost came to a conclusion that they have good title. Besides, defendant Nos. 37 to 39 gave undertaking to the Court that they would develop the land with prejudice and would remove the development in-case the litigation goes against them. In view of these two reasons the learned Judge of the Lower Court rejected the application.

5. I heard the submissions at Bar. The question of title is rather complicated. However, prima facie finding recorded by the Lower Court appears sound. Besides the application would fail mainly because defendant Nos.37 to 39 had given an undertaking to the Court, which is described above. This could be a strongest reason as to why the

application deserves to be dismissed. The learned Judge of the Lower Court also came to the conclusion and rightly so that balance of convenience is in favour of defendant Nos. 36 to 37. In view of this, I am not inclined to go into discussion on title of the parties. Even at this prima facie stage, the Appeal from Order deserves to be dismissed.

6. Hence, the Appeal from Order is dismissed.

7. In view of dismissal of the Appeal from Order, connected Civil Applications do not survive and stand disposed of accordingly.

[A.V.NIRGUDE,J.]

. Application seeking stay to the effect of this order is rejected.

[A.V.NIRGUDE,J.]