

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

WRIT PETITION NO. 12465 OF 2015

1. Kum. Preeti d/o Jairaj Rathod,
@ Preeti w/o Neeraj Rathod,
Age: 39 yrs, occ.: household.
2. Shakti s/o Jairaj Rathod,
Age: 37 yrs, occ: Business,
3. Amit S/o Jairaj Rathod,
Age: 35 yrs, occ: business,
4. Sumit s/o Jairaj Ratod,
Age: 32 yrs, occ: education,

all residents of Vazirabad, Nanded.

...PETITIONERS
(original plaintiffs)

versus

Rajendra Kasturchand Rathod,
Age: 54 yrs. Occ: Business,
R/o : Chowk Bazar, Nanded.
District Nanded.

...RESPONDENT
(Original defendant)

.....
Mr. A.A. Mukhedkar, Advocate for petitioners
Mr. G.D. Raje, Advocate for respondent
.....

CORAM : SUNIL P. DESHMUKH, J.

DATED : 17th MARCH, 2016.

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith and with consent of learned advocates for parties heard, finally.
2. Present petition has been moved by original plaintiffs against judgment and order dated 18-02-2014 in miscellaneous civil appeal No. 63 of 2012 passed by District Judge - 3, Nanded confirming the

order dated 13-04-2012 on Exhibit-5 in regular civil suit no. 296 of 2012 (new) (special civil Suit No. 215 of 2011(old)) passed by joint civil judge, junior division, Nanded, whereunder their application for temporary injunction has been rejected.

3. Briefly stated background of the case appears to be that, Jairaj and Rajendra were real brothers. Plaintiffs are descendants of Jairaj. There was litigation between the parties, which had culminated into a compromise in regular civil appeal No. 62 of 2006. As per the terms of compromise, amount of Rs.26,00,000/- had been agreed to be paid to present petitioners. From the agreed amount, an amount of Rs. 3,00,000/- was to be paid at the time of execution of compromise deed and rest of the amount of Rs. 23,00,000/- was to be paid through cheques and post dated cheques were accordingly issued in advance in favour of the present petitioners. It was further agreed term that amount as contained in the cheques would be paid in cash and upon receiving the same, a receipt to that effect would be executed by recipients and cheques would be returned to the respondent - defendant - uncle. It appears that after presentation of said cheques for encashment in the bank, those were dishonoured.

4. It appears that since allegedly terms of the compromise were not adhered to and the cheques were returned dishonoured, suit has been filed by the present petitioners seeking declaration and perpetual injunction and further declaration that the compromise decree pursuant to compromise deed, passed in regular civil appeal no. 62 of 2006 is ineffective, illegal and not binding on them. Along with the suit, the

petitioners had also filed an application for temporary injunction seeking restraint on defendant from causing any sort of interference and obstruction in their peaceful possession over the suit property and further injunction seeking restraint on defendant from transferring, alienating, or creating third party interest over the suit property.

5. The trial as well as appellate courts having regard to the terms of compromise considered that possession cannot be effectively said with the petitioners - plaintiffs and as such declined to grant injunction in so far as claim of the plaintiffs in respect of possession is concerned. So far as restraint on defendant from alienating, transferring and creating third party interest over the suit property is concerned, the same had been refused by the trial court observing that no documents had been placed on record by the plaintiffs showing their possession over the suit property.

6. Perusal of the judgment and order of the appellate court shows that it does not contain even a whisper and/or that the appellate court has dealt with this aspect of the matter. It further transpires that subsequently there is contention that some sort of publication putting the suit property for sale on preparation of layout. Learned counsel for respondent, however, resists said contention.

7. Having regard to totality of the circumstances, it appears that ends of justice can be met with by equitable order that respondent-defendant shall not be allowed to deal with, transfer, alienate and create third party interest or carry out such activity as would be

detrimental to the interest of the petitioners.

8. As such, writ petition is allowed to aforesaid extent, hence order:-

Parties during pendency of regular civil suit no. 296 of 2012 pending on the file of joint civil judge, junior division, Nanded shall not alienate, transfer or create any third party interest over the suit property or shall not deal with it in a such way so that the rights of the respective parties would be affected.

9. At this stage, learned counsel for the parties states that affidavit of chief-in-examination of plaintiffs has been already submitted and the suit deserves expeditious disposal. In view of the same, joint civil judge, junior division, Nanded, shall dispose of regular civil suit no. 296 of 2012 as expeditiously as possible, preferably within a period of six months from the date of receipt of writ of this order. It is expected that parties would co-operate for expeditious disposal of suit.

10. Writ petition stands disposed of accordingly. Rule is made absolute in aforesaid terms.

Sd/-

(SUNIL P. DESHMUKH, J.)

MTK