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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

APPEAL FROM ORDER NO. 592 OF 2014

with

CIVIL APPLICATION NO. 715 OF 2014

Smt. Sitabai Rajaram Parhad
& Anr.

... Appellants/Applicants.

V/s.

Mr. Dnyaneshwar Pandharinath Katke & Ors. ... Respondents.

Mr. Vilas Tapkir for the Appellants/Applicants.

Mr. Amol Gatne i/b. S.B. Deshmukh for Respondents 1,2,19,21 and 22.

CORAM : N.M. Jamdar, J.

22 June, 2016.

Oral Order :-

The Appellants – Original Plaintiffs challenge the judgment and order passed by the learned Civil Judge, Senior Division, Pune dated 22 April 2014 below Exhibit 5 and below Exhibit 75. The Appellant – Plaintiff has filed a Special Civil Suit No. 1679 of 2010 for cancellation of the sale deed dated 5 December 2005 executed by Defendant Nos. 4 to 11 on the basis of Power of

Attorney to Defendant Nos. 1 and 2. The Plaintiffs also sought relief of injunction against the Defendants. In this Suit the Appellants – Plaintiffs took out an Application below Exhibit 5 against Defendant Nos.1 to 11 and against Defendant Nos. 19 to 22 below Exhibit 75. The Appellants sought an injunction against the Defendants that they should not disturb the Appellants' possession and not create third party rights in respect of Suit land Gat Nos.123,124,128,131 and 132 at Village Wadebolhai, Taluka Haveli, District Pune. The learned Civil Judge by the impugned order partly allowed the Application and restrained the Defendant Nos.1 to 9 and 19 to 22 from creating third party rights and disturbing the possession of the Appellants in respect of ½ share in Gat No.124 and to the extent of 1/3rd share in Gat Nos. 128 and 131. Since no relief was granted in respect of the other properties, the Appellants had filed the present Appeal.

2. I have heard the learned Counsel for the parties.

3. The learned Counsel for the Appellants submitted that the learned Civil Judge had granted an order of status-quo in respect of all the properties on 10 March 2014 which is continued by this Court on 22 July 2014. He submitted that in the circumstances the order of status-quo in respect of all the properties be continued till disposal of the Suit. The learned Counsel for the Respondent Nos.1,

2 and 19 to 22 opposes this request. This opposition is justified. The order dated 10 March 2014 was an ad-interim order passed by the learned Civil Judge which stood super-seeded by the final orders passed by the learned Civil Judge. Thereafter, the continuation of status-quo by this Court was without hearing of the Respondents when the notice was issued to the Respondents. The Appeal is not admitted and is pending for admission. The Appeal therefore will have to be considered on merits.

4. As far as merits of the case of the Appellants is concerned, the learned Civil Judge has observed that the Appellants nor the Defendants produced any cogent documents to prove their possession over the Suit property. The learned Counsel for the Appellants relied on Mutation Entry No. 900 in respect of the properties. This entry has been made on the basis of an application made by Sitaram Paygude and Chandrabhaga Bhorde. This entry is not an unquestionable entry. The entry is challenged and the name of the Appellants have been deleted from 7 x 12 extracts and these proceedings are pending. Therefore, only on the basis of such disputed entry, the possession of the Appellants cannot be stated to be established. The Appellants have not produced any other evidence such as an affidavit of neighbours, bills, receipts, etc. which could have been produced. The learned Judge in the circumstances was left with no option but to ascertain the title to the properties.

The learned Judge accordingly has examined the title of the Appellants in respect of each of these lands. The learned Counsel for the Appellants has unable to show any document of title in respect of the lands for which no injunction is granted. Depending on the evidence that was led before the learned Civil Judge, the learned Civil Judge, after detailed consideration did not find prima-facie case in favour of the Appellants. In the circumstances, the discretion used by the Civil Judge in partly allowing the Applications cannot be stated to be illegal or perverse. For the land for which the Appellants to have established the title, irrespective of evidence as to possession, the learned Civil Judge has granted injunction, which order is not challenged by the Defendants.

5. In the circumstances, the Appeal from Order cannot be entertained and is dismissed. Civil Application is accordingly disposed of.

(N.M. Jamdar, J.)