

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

APPEAL FROM ORDER NO. 1320 OF 2008

Kanha Ladkya Pared & ors.

... Appellants

v/s

Sohail Ahmed Kurshid Ahmed Khan & ors.

... Respondents

None appears for the parties.

Coram: N.M. Jamdar, J.

Dated: 21 June 2016

P.C.:

Notice was issued in the appeal on 19 December 2008. The appeal was admitted by order dated 1 December 2009. When the appeal was called on 12 January 2016, none appeared for the parties in the morning session as well as in the afternoon session. Today also when the appeal was called out, none appeared. The board is notified in advance. The matter is therefore taken up for consideration.

2 The Appellants challenge the order passed by the learned Civil Judge, Senior Division, Vasai, dated 7 November 2008, below Exh.5 in Special Civil Suit No.46 of 2008 filed by the Respondent No.1/Plaintiff. The learned Civil Judge, by the impugned order, has

restrained the Appellants from creating third party rights or interfering with the possession of the Respondents.

3 The suit was filed by Respondent No.1 for specific performance of an agreement dated 5 February 2007 and for an injunction and in the alternative for damages. The learned Civil Judge, after considering the evidence on record, *prima facie*, held that the agreement was executed and earnest money was received, and accordingly put the Appellants under restraint for creating third party rights. There is no stay to the operation of this protective order in favour of the Respondents/ Plaintiffs in this appeal.

4 The order of injunction is operative for the last six years. In the circumstances, it will be appropriate that the order passed on 7 November 2008 is continued till the disposal of the suit, subject to the rights and contentions of the parties, to be agitated at the time of hearing of the suit.

5 Accordingly, the appeal is disposed of, keeping all contentions of the parties on merits of the dispute open.

(N. M. JAMDAR, J.)