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

***CIVIL APPLICATION NO. 1855 OF 2015
IN
SECOND APPEAL NO. 732 OF 2015***

Nathubai Krishna Jadhav

Since deceased through her heirs & L.Rs. ... Applicants/Appellants.

V/s.

Vitthal Sankar Tavar and Anr.

... Respondents.

Mr. S.G. Deshmukh a/w. Avinash Patil for the
Applicants/Appellants.

Mr. Mahindra Deshmukh for Respondents 1 & 2.

CORAM : N.M. Jamdar, J.

15 July, 2016.

P.C. :-

The Applicant by this Application seeks two reliefs. First, a direction to Respondent Nos. 1 and 2 not to create third party rights. Second, an order of injunction against Respondent No.1 not to disturb possession of the Applicant over the Suit property.

2. Heard learned Counsel for the parties.

3. The learned Counsel for the Applicant submitted that the property is a joint family property and a stranger purchaser cannot be put in possession unless there has been a previous partition and the shares are allotted specifically to the vendors. The learned District Court has considered this contentions and has held that there was previous partition. Apart from this position, which relates to merits of the rival contentions in the Appeal, it has to be noted that after the Trial Court had granted decree for injunction when the Appeal was filed by the Respondents in the District Court, the order of injunction was stayed. Therefore, during the pendency of the Appeal which was instituted in the year 2008 till the year 2014, the order of injunction was stayed. Even during the pendency of the Suit filed in the year 1992, there was no order of injunction. In the circumstances, when the Suit was filed in the year 1992 and there has been no injunction in favour of the Applicant, it cannot be granted at this stage. Ad-interim order passed on 4 December 2014 was without hearing the Respondent who has now filed a reply and has placed this position on record.

4. As regard the prayer for injunction against the Respondent from not creating third party rights, the Respondent will not part with possession or sell the said property, It is informed that the Respondent has taken the loan from the bank for agricultural purposes. The Respondent undertakes to repay the loan during the

pendency of the Appeal and from creating encumbrance, thereafter will not create any third party rights in the suit property.

5. The Civil Application is accordingly disposed of in the above terms.

(N.M. Jamdar, J.)