

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

WRIT PETITION NO. 1387 OF 2017

Sharnappa s/o. Basavlingappa Ragho .. Petitioner
Age. 67 years, Occ. Business & Agri.,
R/o. Tagarkheda & Aurad Sha.,
Tq. Nilanga, Dist. Latur.

Versus

1. Godawari w/o. Babu Ragho .. Respondents
Age. 62 years, Occ. Household,
R/o. Aurad Sha., Tq. Nilanga,
Dist. Latur.
2. Ramesh s/o. Basavlingappa Ragho
Age. 52 years, Occ. Business & Agri.,
R/o. Tagarkheda & Aurad Sha.
Tq. Nilanga, Dist. Latur.

Mr.S.M. Vibhute, Advocate for the petitioner.
Mr.S.B. Gastgar, Advocate for respondent No.1.

CORAM : S.B. SHUKRE, J.
DATED : 01.03.2017

ORAL JUDGMENT :-

1. Heard learned Counsel for the petitioner and learned Counsel for respondent No.1. Respondent No.2 is original defendant No.1 in R.C.S. No.150 of 2012. In the two suits a common decree has been passed against the petitioner as well as respondent No.2, being real brothers, for handing over possession of the suit

property to respondent No.1. Therefore, notice to respondent No.2, as rightly submitted by the learned Counsel for the petitioner, can be dispensed with and it is dispensed with accordingly.

2. Rule. Rule made returnable forthwith and heard finally by consent.

3. It is not in dispute that R.C.A. No.46 of 2015 has been admitted for final hearing. It is also not in dispute that by the impugned judgment and decree, the petitioner has been directed to handover possession of the suit property to respondent No.1. If the appeal has been admitted for final hearing and if the respondent is not in possession of the disputed property, it would be just and proper that the application vide Exh.5 is allowed, otherwise some irreparable loss would be caused to the petitioner. By the impugned order dated 21.10.2016 the learned District Judge has recorded a finding in a manner which indicates that it is a final finding of fact in the appeal even without appreciating the evidence. This is clear from his observation appearing in para 6 to the effect "As such, the Ld. Civil Judge has rightly appreciated the evidence and came to the logical conclusion". The appeal has not been finally heard and therefore there was no occasion for the learned District

Judge to have appreciated the evidence available on record and yet surprisingly the learned District Judge records finding that the learned Civil Judge has rightly appreciated the evidence and come to the logical conclusion. This is not permissible in law at this interlocutory stage. The impugned order is against the well settled principle of law and needs to be quashed and set aside.

4. The writ petition is allowed. The impugned order is quashed and set aside. Application Exh.5 is allowed. However, no third party interest shall be created by the petitioner and the property shall not be alienated till final disposal of the appeal.

5. Rule made absolute accordingly. No costs.

[S.B. SHUKRE,J.]