

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

914 WRIT PETITION NO. 13255 OF 2017

VIJAY DATTATRAYA GALANDE AND ANOTHER
VERSUS
SARJERAO LAXMAN PAVANE AND OTHERS

WITH

WRIT PETITION NO. 13191 OF 2017

VIJAY DATTATRAYA GALANDE AND ANOTHER
VERSUS
SARJERAO LAXMAN PAVANE AND OTHERS

...

Advocate for Petitioners : Mr. Pramod F. Patni.

Advocate for Respondent No.1 : Mr. V. P. Narwade.

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CORAM : **V. K. JADHAV, J.**

DATE : 21st November, 2017.

ORDER:

. Being aggrieved by the judgment and decree passed in Special Civil Suit No.28 of 2012, the Petitioner / original Defendant has preferred Regular Civil Appeal No.378 of 2016. Pending the appeal, the Petitioner as filed an application Exhibit 7 for temporary injunction to protect his possession over the suit property till the disposal of the appeal and also filed an application Exhibit 27 for staying the effect of the judgment and decree under appeal. The learned District Judge has rejected the both the applications. Hence, these two writ petitions have been filed by the Petitioner / original Defendant.

2 The learned counsel for Respondent / original Plaintiff submits that during the pendency of the appeal before the District Judge as well as these writ petitions, the Respondent / Plaintiff got executed the judgment and decree passed by the Trial Court without filing the execution petition from the original Defendant No.1. The learned counsel submits that the present Petitioners are the purchasers of the property from original Defendant No.1. The learned counsel submits that the Trial Court has recorded the finding in the negative to issue No.7B and held that the Plaintiff is not entitled to cancellation of sale-deed dated 21st September, 2012 i.e. the sale-deed executed in favour of the present Petitioner. The learned counsel submits that in view of the same, even though the sale-deed has now been executed by the original Defendant No.1 in favour of the Respondent / Plaintiff without filing any execution petition, at least till the disposal of the suit, the learned District Judge should have taken care to direct the Respondent / original Plaintiff not to create any third party interest in respect of the suit property.

3 In view of the above submissions and particularly the finding recorded by the Trial Court in respect of issue No.7B in the negative, I find much substance in the submissions made by the

learned counsel on behalf of the Petitioner. Both the writ petitions are thus, disposed of by directing the Respondent / Plaintiff as not to create any third party interest in respect of the suit property till the disposal of the appeal pending before the lower Appellate Court.

[V. K. JADHAV, J.]

ndm