

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

APPEAL FROM ORDER NO. 119 OF 2015

KISAN SUKHDEO JAGTAP
VERSUS
BHIKA NAMDEO JADHAV (DIED)
SARUBAI BHIKA JADHAV AND OTHERS

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Advocate for Petitioner : Mr. Sanket S. Kulkarni.

Advocate for Respondent Nos.2 to 4 : Mr. Milind Patil.

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

DATE : 13th February, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the order below Exhibit – 5 in Regular Civil Appeal No.62 of 2014 dated 27th August, 2015 passed by District Judge-1, Kopergaon, the original Appellant before the lower Appellate Court has preferred this appeal from order.

3 Brief facts giving rise to the present appeal from order as as follows:

- i. On 14th July, 2009, the Appellant / original Plaintiff had purchased land Gat No.12/1 admeasuring 80 Ares situated at Talegaon Male, Taluka Kopergaon, District Ahmednagar from

Respondent No.1 under the registered sale-deed for consideration of Rs.2,65,000/-. In spite of alienating the land under the registered sale-deed, the Respondents started obstructing the peaceful possession of the Appellant / Plaintiff over the suit land. The Appellant / Plaintiff therefore, constrained to institute Regular Civil Suit No.145 of 2012 (Old number RCS.235 of 2009 and Special Civil Suit No.70 of 2011) before the Civil Judge Senior Division, Kopargaon. The learned Judge of the Trial Court by judgment and decree dated 30th June, 2014 pleased to dismiss RCS No.145 of 2012, however, partly decreed the counter claim of the Respondents who raised a plea that the said land was sold without there being any legal necessity and by playing fraud on Respondent No.1.

- ii. Being aggrieved by the judgment and decree passed as aforesaid in RCS No.145 of 2012, the present Appellant preferred Regular Civil Appeal

No.62 of 2014 before the District Court, Kopargaon and also filed an application for temporary injunction to protection his possession over the suit land till the disposal of the appeal. The said application came to be strongly resisted by the Respondents herein. The learned District Judge-1, Kopargaon vide its impugned order dated 27th August, 2015, rejected the said application. Hence, this appeal from order.

4 The learned counsel for Appellant as well as the learned counsel for Respondents have raised various legal points while commenting on the judgment and decree passed by the Trial Court in RCS No.145 of 2012. In addition to that, the learned counsel for the Appellant has submitted that after the institution of the said suit, the possession of the Appellant / original Plaintiff was protected by the Trial Court by allowing the application Exhibit – 5 seeking the relief of temporary injunction and the said order remained in force for near about four years i.e. till the disposal of the suit.

5 Per contra, the learned counsel for Respondents

submits that the order passed on the application Exhibit – 5 seeking the relief of temporary injunction merged into the final decree and it appears *prima-facie* and the same has also been observed by the learned District Judge that the Appellant / original Plaintiff fails to prove his possession over the suit land.

6 In view of the above submissions, this application seeking the relief of temporary injunction cannot be disposed of unless the merit of the appeal is considered. The parties are fighting this litigation since 2009. In view of this, if the parties are directed to maintain the *status-quo* as on today and if the learned District Judge is directed to dispose of the appeal expeditiously preferably within a period of three months, such directions would meet the ends of justice. Hence, I proceed to pass the following order:

ORDER

- I. Appeal from Order No.119 of 2015, is hereby partly allowed.
- II. The order dated 27th August, 2015 passed by District Judge-1, Kopargaon below Exhibit – 5 in

Regular Civil Appeal No.62 of 2014, is hereby quashed and set aside.

- III. Instead of allowing the application Exhibit – 5 in Regular Civil Appeal No.62 of 2014, the parties are directed to maintain the *status-quo* as on today till the disposal of the appeal and the application Exhibit – 5 is accordingly disposed of.
- IV. The learned District Judge-1, Kopargaon, is hereby directed to dispose of Regular Civil Appeal No.62 of 2014 as expeditiously as possible preferably within a period of three months from the date of this order.
- V. Appeal from order is accordingly disposed of
- VI. Pending civil application stands disposed of.

[V. K. JADHAV, J.]