

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

**1179 APEAL FROM ORDER NO. 85 OF 2016**  
**WITH CA/15582/2016 IN AO/85/2016**

MR. KAILASBHAI MOHANLAL JOHI  
VERSUS  
SOU. SUNITA VIJAY NANDURKA

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Advocate for Petitioner : Nagarkar Kiran M. & Hoamath Basavaraj U  
Advocate for Respondents : Latange V.P.

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**CORAM : V.K. JADHAV, J.**  
**DATE : 17-03-2017.**

**P.C. :**

1. Heard finally with consent at the admission stage.
2. Being aggrieved by the order passed below exhibit-3 in R.C.A. 114 of 2016 by District Judge-2, Ahmednagar dated 07.09.2016, the original-defendant has preferred this appeal.
3. Brief facts giving rise to the present appeal are as follows.
4. The present respondent has instituted a special civil suit no. 180 of 2006 for declaration and perpetual injunction in respect of the suit property against the appellant and the learned Jt. Civil Judge Senior Division, Ahmednagar by its judgment and decree dated 22.01.2010 dismissed the suit. Being aggrieved by the same, the respondent-original plaintiff has preferred the appeal bearing R.C.A. No. 114 of 2016. Initially, the respondent original

plaintiff has preferred first appeal no. 758 of 2010 before this Court, however, after the amendment to the jurisdiction of District Court, the appeal was transferred to the District Court and accordingly re-numbered as R.C.A. No. 114 of 2016. The respondent original plaintiff has filed an application exhibit-3 in the aforesaid R.C.A. no. 114 of 2016 with the contention that, the appellant-original defendant is trying to change the nature of the suit property and, therefore, during the pendency of the appeal she be restrained from changing the nature and character of the suit property. The learned District Judge-2 by its impugned order dated 07.09.2016 allowed the said application.

5. The learned counsel for the appellant submits that, during the pendency of the first appeal no. 758 of 2010 before this Court, the respondent original-plaintiff preferred an application against the present appellant for not to create any third party interest in respect of the suit property and this Court has not considered the said application with the observations that, notice under Section 52 of the Transfer of Property Act had already registered. The learned submits that, despite rejection of the said application, the respondent original-plaintiff has filed an application exhibit-3 with different prayer and the learned District Judge by the impugned order directed both the parties to the maintain status quo in respect of the suit property. The learned counsel submits that, the appellant original-defendant is an old aged person suffering

from kidney disease. Since the trial Court has dismissed the suit of the respondent-original plaintiff, the appellant-original defendant is entitled to start construction work over the property which is the subject matter of the suit.

6. The learned counsel for the respondent-original plaintiff submits that, the appeal before the lower Appellate Court is ready for hearing, however, the present appellant-original defendant is seeking adjournment in the said appeal under the pretext that the present appeal is pending before this Court. The learned counsel submits that, the respondent-original plaintiff has filed the application before this Court when the appeal was pending, restraining thereby the appellant herein/original defendant to create any third party interest in the property, however, after the appeal was transferred to the District Court and re-numbered as R.C.A. No. 114 of 2016, the present appellant-original defendant has started construction over the suit property and, therefore, the respondent original plaintiff was constrained to file an application restraining the original defendant from changing the nature of the property till the disposal of the appeal. After hearing the parties, the learned District Judge-2 has rightly directed the parties to maintain status quo in respect of the suit property and further directed the defendant not to change the nature and character of the property.

7. So far as, the order passed by this Court disposing of

the application for restraining the defendant from creating any third party interest in the property is concerned, the same would not come in the way of the plaintiff to file application at a subsequent stage, noticing that by taking disadvantage of the dismissal of the suit, the defendant is making construction over the suit property. The plaintiff has, therefore, rightly filed an application in the pending appeal before the lower Appellate Court that, till the disposal of the appeal the defendant shall not change the nature and character of the property. The learned counsel for the respondent has pointed out that, the lower Appellate Court is ready to hear and dispose of the matter at the earliest, however, the original defendant is not willing for the same and, therefore, the said appeal is pending. The learned District Judge-2 has directed the parties to maintain quo in the light of the apprehension expressed by the plaintiff about the change in the nature and character of the suit property. I do not find any fault in the order passed by the learned District Judge-2. No interference required, there is no merit in the appeal, however, with certain directions about expeditious disposal of the appeal, this appeal can be disposed of. Hence the following order.

#### **ORDER**

- i) Appeal is hereby dismissed, no costs.
- ii) The learned District Judge-2, Ahmednagar shall dispose of the pending R.C.A. No. 114 of 2016 within three

months from the date of this order.

iii) Parties to co-operate.

iv) Civil application also stands disposed of.

**(V.K. JADHAV)**  
**JUDGE**