

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

WRIT PETITION NO. 871 OF 2015

Dinesh Shrimant Adsul and others .. Petitioners

Versus

Sushil Bhau Adsul and others .. Respondents

Shri Mukul S. Kulkarni, Advocate for Petitioners.

Shri P. P. More, Advocate h/f Shri N. V. Yadav, Advocate for the
Respondent No. 1.

CORAM : S. V. GANGAPURWALA, J.

DATE : 13TH DECEMBER, 2017.

FINAL ORDER :

. The petitioners are original plaintiffs, who have filed suit for declaration that the sale deed is not binding and the injunction. The present respondent No. 1/defendant No. 3 filed a counter claim seeking injunction. The plaintiffs and the defendant No. 3 both filed applications for temporary injunction. The application of the defendant No. 3 for temporary injunction is allowed and the application of plaintiffs for temporary injunction is rejected. The plaintiffs filed miscellaneous civil appeal. The miscellaneous civil appeal is dismissed. Aggrieved thereby present writ petition.

2. Mr. Kulkarni, the learned advocate for petitioners submits

that, both the Courts have failed to consider that, the alienation made by the defendant No. 1 in favour of the defendant No. 2 is challenged. The defendant No. 2 never received possession of the property. Entries made in the revenue record in the name of defendant Nos. 2 and 3 are erroneous. The plaintiffs are in possession of the property. All these aspects have not been considered by both the Courts below.

3. Mr. More, the learned advocate for the respondent No. 1/defendant No. 3 submits that, the plaintiffs had earlier filed suit bearing R.C.S. No. 434 of 2003, wherein valuation of block No. 542 was not subject matter, block 542 was standing in the name of the defendant No. 1. He alienated said property in favour of the defendant No. 2 on 23.08.2007. The plaintiff Nos. 1 to 3 are children and plaintiff No. 4 is wife of the defendant No. 2. The defendant No. 2 was owner of the suit land on the date of suit and the defendant No. 2 alienated 40R land in favour of the defendant No. 3. All these facts are considered.

4. It appears that, for two years there is no interim order in the matter. On the contrary injunction is running against the petitioners. Both the Courts have considered the aspect of possession in reasonable manner.

5. Even otherwise, at this stage, the Courts have to arrive at *prima facie* findings. In the result, the writ petition is disposed

of. The Trial Court shall endeavour to decide the suit expeditiously on the basis of evidence that would be adduced before it. No costs.

[S. V. GANGAPURWALA, J.]

bsb/Nov. 17