

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1488 OF 2014

Smt. Krishnabai Dattatraya Gaikwad and Ors. ... Petitioners

v/s.

Shri Dnyaneshwar Baburao Gaikwad
(since deceased) by Lrs and Ors. ... Respondents

Mr. B.G. Nigade i/b. Dhrupad Patil for Petitioners
Mr. Prashant Patil for Respondent Nos.1 to 5, 10,12,18 to 21, 26 -30 , 33
& 39.

CORAM: M.S.SANKLECHA, J.
DATE : 6th SEPTEMBER, 2017.

P.C:-

1. This petition under Article 227 of the Constitution of India challenges the order dated 20th December, 2013 passed by the Civil Judge, Senior Division, Pune. By the impugned order, the Petitioners' application for cancellation of the sale deeds dated 9th August, 2005, 7th April, 2011 and 5th April, 2011, on an application made under Order 39 Rule 2(A) r/w. Section 151 of the Civil Procedure Code, 1908 (Code), was rejected. I am informed that the suit is still awaiting final disposal.
2. It is the Petitioners' (Original Plaintiff) case that in a suit filed for partition, ad-interim temporary injunction had been granted on 2nd

February, 2005 in its favour in respect of the suit lands directing the Respondents to maintain status quo in respect thereof. However, in the face of the above order and in breach thereof the Respondents have in breach of the injunction order executed the three sale deeds.. The impugned order records the fact that there is a dispute whether the sale deeds in question have been executed in respect of the suit lands. Consequently in the absence of evidence being filed it cannot be conclusively held that there is a breach of the injunction order on the part of the Respondents. Further, the impugned order holds that in terms of Order 39 Rule 2(A) of the Code, the consequence as provided there is not the cancellation of a sale deed but only attachment of the property of the person in breach of the injunction order or detention of such person in civil provision.

3. The view taken by the impugned order is a possible view, in the facts before it. Therefore, would not warrant any interference in my supervisory jurisdiction under Article 227 of the Constitution of India.

Accordingly, petition is dismissed. No order as to costs.

(M.S.SANKLECHA,J.)