

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.98 OF 2017
WITH
CIVIL APPLICATION NO.135 OF 2017

Digambar Sadashiv Govardhan and Anr. ...Appellant
Versus
Shashikant Haribhau Jadhav & Ors. ...Respondents

Mr. Sachin Gite for the Appellant/Applicant
Mr. S.M.Garwadkar Sr.Advocate i/b Sujay H.Gangal for
the Respondent No.1

CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED: 21st June, 2017

PC:-

1. The Appellants herein have challenged the impugned order dated 27/06/2014, whereby the learned Civil Judge Senior Division Nashik allowed the application for injunction filed by the Respondent herein and restrained the Appellants being Defendant No.5 and 6 from creating 3rd party interest

in respect of the suit land or disturb the nature of the suit land till the decision of the suit.

2. At the outset, Shri.Gite, the learned Counsel for the Appellants submits that the impugned order was passed without hearing the Appellants. He has submitted that the Counsel for the Appellants had failed to remain present before the Court and argue the matter.

3. Perusal of the impugned order shows that the Counsel for the Appellant was not heard in the matter. The learned Counsel for the Respondents concedes that the matter should be remanded and an opportunity should be given to the Appellants to putforth their case and advance their submission. Considering the fact that the Appellants were not heard in the matter and in view of the statement made by the learned Counsel for the Respondent, the impugned order is set aside. The matter is remanded to the Trial Court to decide the application at Exh.5 afresh after hearing both the parties.

It is made clear that the injunction granted in favour of the Respondents will continue to operate till the disposal of the application on merits. The learned Trial Judge is directed to dispose of the said application within a period of one month from the date of receipt of the order.

4. It is made clear that this Court has not gone into the merits of the case. All points and contentions are kept open.

5. In view of the disposal of the Appeal the Civil Application does not survive and hence, stands disposed of

(ANUJA PRABHUDESSAI, J.)