

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO. 3194 OF 2014
IN
FIRST APPEAL NO. 876 OF 2014**

Dr.Ayaz Naik & Anr.

...Applicants

Versus

Shri Altaf Hussain Naik
(since deceased through legal representatives)
Miss. Zeib Altaf Naik & Ors.

...Respondents

.....

Mr.S.S.Patwardhan i/b. Mr.Chetan G. Patil for the Applicants.

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**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: NOVEMBER 28, 2017**

P.C. :

1. This Appeal was admitted on 24.02.2015. On that day, the notices were issued to the respondents in Civil Application for stay. The record discloses that the notices were served on the respondents i.e. original plaintiff nos. 1 and 2 and respondent no. 3 i.e. original defendant no.1.

2. Learned counsel for the applicants submits that respondent no.3/ defendant no.1 is the land owner against whom respondent nos. 1 and 2/ original plaintiffs have filed a Suit for specific performance, which was partly decreed by order dated 26.03.2014 passed by the learned 2nd Addl. Judge, Small Causes Court, Pune. The prayer of specific performance was refused. However, the amount of consideration, which was accepted by defendant no. 1/ respondent no.3 was directed to be returned in equal shares to respondent nos. 1 and 2/original plaintiffs and the present applicants/ original defendant nos. 2 and 3. He further submits that against the said order, this present appeal is filed. He prays that respondent no.3/defendant no.1 be restrained from transferring/alienating or creating any right or third party interest and parting with possession or any part thereof, in respect of the suit property. However, though notice is served, none present for respondent no. 3/defendant no.1.

3. In view of this submission and as the notice has already been served on respondent no.3, this Civil Application is allowed in terms of prayer clause (A) and reads thus:

“A) That pending hearing and final disposal of the first appeal this Hon'ble Court be pleased to restrain respondent no.3 or his servants, agents or any person claim on his behalf or through him by an order of injunction from alienating/ transferring, creating any right or third party interest and parting with possession or any part thereof, in respect of the suit property bearing Survey No.11, Hissa No. 2A, Kondwa Khurd admeasuring 8.36 R Survey No. 11, Hissa No. 9 + 14/2A, Kondhwa Khurd admeasuring 11 R Survey No. 11, Hissa No. 9_14/2/A/1/11 admeasuring 6 R situated at Kondwa Khurd having its total area about 25.36 R i.e. 2536 sq. meters”.

4. Civil Application is allowed and is disposed of accordingly.

(MRIDULA BHATKAR, J.)