

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

17 WRIT PETITION NO. 575 OF 2017

SHOBHABAI DADARAO THORE AND OTHERS
VERSUS
PUNDALIK EKNATH TALELE AND OTHERS

...

Advocate for Petitioners : Mr.Sonwane Mahesh R.

Advocate for Respondent No. 1 : Mr. Patni Vilas

Advocate for Respondent No 2 : Mr. Kasliwal Ajit D.

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CORAM : S.V.GANGAPURWALA, J.

DATE : AUGUST 14, 2018

O R D E R :

The petitioners are the original plaintiffs. They have filed suit for declaration and injunction along with application for temporary injunction. The application for temporary injunction was rejected. Aggrieved thereby, the plaintiffs filed appeal before the District Court and the District Court has dismissed the same.

2. Mr. Sonawane, learned counsel for the petitioners submits that the Court below failed to

consider actual and physical possession of the petitioners. The possession was never delivered to the defendants on the basis of General Power of Attorney and the defendants cannot claim to be in possession.

3. The learned counsel submits that the mutation proceedings are also in progress. The Talathi has submitted his report. The learned counsel submits that as against these documents, the Court has relied only on the General Power of Attorney and erroneously held that defendants are in possession.

4. Mr. Kasliwal, leaned counsel for the respondents supports the order.

5. Application for temporary injunction has been rejected by the trial Court on 2.4.2013. Appeal is dismissed on 17.3.2016 and there is no prohibitory

order in force for long slumber of five years.

6. It is settled position of law that the appellate Court would be loath in interfering in the discretion of the trial Court and further the jurisdiction would narrow down while exercising writ jurisdiction.

7. It is also not the matter of debate that observations made by the trial Court and the appellate Court while determining application for temporary injunction are only prima-facie in nature. The Courts have to decide the suit on the basis of evidence adduced by the parties. It is submitted that the plaintiff has already led their evidence and now the matter is fixed for evidence of the defendants.

8. Considering the above, it cannot be appropriate to direct the trial Court to decide the

suit on its own merit.

9. The trial court shall endeavour to decide the suit expeditiously as per evidence adduced and the document on record.

10. The Writ Petition is disposed of. No costs.

[S.V.GANGAPURWALA, J.]

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