

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.282 OF 2018
WITH
CIVIL APPLICATION NO.369 OF 2018

Mr. Vinay Bhorge s/o Saheb Rao Bhorge ..Appellant

vs.

Mr. Sahebrao Bhorge s/o Ramrao Bhorge and Anr. ...Respondents

Mr. J. A. Udaipuri a/w Mr. Vinay Bhorge i/b Udaipuri & Co. for the Appellant.

None for the Respondent.

CORAM : V. M. DESHPANDE, J.

DATE : 2nd JULY, 2018

P.C.:

. Heard learned counsel for the appellant. Nobody is appearing for the contesting Respondent No.1 though he is duly served. The appellant is the original plaintiff. He filed Special Civil Suit No.171/2017 on the file of Civil Judge Senior Division Kalyan. Pending suit he moved application Exh.5 for temporary injunction against the Respondent No.1/Defendant No.1. Defendant No.1 is the father of the plaintiff. Original Defendant Nos.2 and 3, who are Respondent Nos.2 and 3 before this Court are his brothers.

2. According to learned counsel for the appellant his brothers are not necessary for decision of the present appeal. The contention of the learned counsel for the appellant is that the appellant is apprehending that property No.5 which is in the schedule of properties Field Survey No.64, Khupsarwadi, Nanded may be alienated or transferred by the father. According to him this property is the property acquired from joint family

fund therefore the appellant is having right in the same. He submits that Defendant No.1 is having affair with some lady and therefore he is having apprehension that he will dispose of the said property.

3. Learned Judge of the Court below has rejected the application for temporary injunction. The learned Judge in my view has correctly recorded that it will the matter of trial to point out that property No.5 i.e. the agricultural land situated at Nanded is produced from and out of joint fund especially when as of today, the said property stand in the name of Defendant No.1. The learned Judge of the Trial Court has correctly considered the ambit and scope of the Transfer of Properties Act. The learned counsel has fairly stated before me that he has learnt that third party right is already created. If such right is already created obviously the same will be subject to the result of the suit. However, the learned Judge in my view has not committed any mistake in not granting any relief especially when there is no concrete material on record to show that Defendant No.1 was in the process of disposing of the said land. In that view of the matter, no exception can be taken out. Appeal is dismissed. Needless to mention that pending Civil application is also disposed of.

(V. M. DESHPANDE, J)