

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

**APPEAL FROM ORDER NO.454 OF 2017
WITH
CIVIL APPLICATION NO.582 OF 2017**

Shri Bandendra Devappa Kole (decd.) thr.

Lrs. And Anr.

..Appellants

vs.

Shri Dilip Sukhdev Gavali and Ors.

...Respondents

Mr. P.M. Arjunwadkar for the Appellants .

Mr. Kuldeep U. Nikam for the Respondent Nos.1 to 5 (contesting).

CORAM : V. M. DESHPANDE, J.

DATE : 6th JULY, 2018

P.C.:

. Heard Learned counsel for the parties. The few facts for just decision of this appeal are as under:

2. The appellants before this Court are the original plaintiffs. They have filed Regular Civil Suit No.321/2004 in the Court of 4th Joint CJJD Sangli. The Suit was for declaration and perpetual injunction. In short the suit was for declaration that the sale deed executed by original Defendant No.11 in favour of predecessor in title of the present Respondent Nos.1 to 5 be declared as null and void. Also perpetual injunction was claimed that the defendant shall not deal in any manner whatsoever with the suit property and shall not disturb their possession. Pending suit, application (Exh.5) was moved for temporary injunction. The said application was rejected by the Court below. Against the said order Miscellaneous Civil Appeal No.40/2015 was filed on behalf of original

plaintiff and injunction was granted in favour of the appellant and said was continued till the decision of Regular Civil Suit. This fact is undisputed.

3. Learned Judge of the Court below by judgment and order dated 20/4/2016 dismissed the suit on its own merit. Aggrieved by the same RCA No.206/2016 was filed by the present appellant which is still pending before the competent lower Appellate Court. In the said RCA application (Exh.7) is moved. The learned District Judge on 21/6/2016 granted injunction in favour of the appellants thereby restraining the respondent Nos.1 to 5 from disturbing peaceful possession of the appellants. Notices of Application below Exh.7 were also issued. After the notices were served, the learned Principal District Judge, Sangli on 23/1/2017 rejected the application below Exh.7. Against that present appeal is filed. After the Application Exh.7 was rejected by order dated 25/1/2017, the learned Principal District Judge has himself stayed the order till 23/2/2017 and, thereafter, the appellant initially filed proceedings in the nature of Writ Petition before this Court and ad-interim relief was granted in favour of the appellant till 3/3/2017 subject to further orders in the proposed appeal from order and, ultimately, the present Appeal from order.

4. Looking to this position and in view of the fact that Regular Civil Appeal is still pending before the Appellate Court, in my view when the injunction was operating in favour of the appellant during the pendency of suit and it is operating even today, without going into merits or demerits of the matter, the Appellate Court can be directed to decide appeal itself. Hence, order:

ORDER

i) The Principal District Judge, Sangli shall after hearing the parties to the Regular Civil Appeal No.206/2016 shall decide and dispose of the same

in accordance with law within 9 months from the date of receipt of this order;

ii) That during pendency of this appeal, interim order in the nature of injunction which are operating in favour of the appellant shall remain in operation;

iii) With this appeal is disposed of. No costs. Pending Civil application is also disposed of.

(V. M. DESHPANDE, J)