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

WRIT PETITION NO.5835 OF 2016

Baban Dagadu Kenjale and anr ... Petitioners
V/s.
Saraswati Tukaram Taras and ors ... Respondents

Mr. Sudhir Vinayak Sadavarte, for the
Petitioners.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 27th FEBRUARY, 2018.

P.C. :

- 1] Heard learned counsel for the petitioners.
- 2] By this petition filed under Article 227 of the Constitution of India, the petitioners are challenging the order dated 3rd February, 2016, passed by the District Judge -21, Pune, thereby partly allowing Misc.Civil Appeal No.410 of 2015 and restraining the present petitioners from creating third party interest in the suit property till disposal of the suit.
- 3] The submission of learned counsel for the petitioners is that the trial Court, while deciding application for interim relief filed in Special Civil Suit No.886 of 2013 rightly held that the respondents-plaintiffs have failed to make out prima facie case and balance of

convenience does not lie in their favour, hence no irreparable loss would be caused to them and accordingly rejected the application for interim relief. However, while deciding Misc. Civil Appeal, filed against the impugned order, the Appellate Court has entered into legality and validity of the Will executed by the testator, observing that it was not attested by the attesting witness and thus, held the Will to be not legal and valid. The Appellate Court, has then restrained the present petitioners from creating third party rights in the suit property. It is submitted that such order is likely to cause prejudice to the petitioners.

4] In my considered opinion, the impugned order is passed by the Appellate Court on 3.2.2016. Now after lapse of considerable period, as the suit is pending in the trial Court from the year 2013, instead of disturbing that order at this stage, the interest of justice would be served if the trial Court is directed to decide the said suit itself as expeditiously as possible, as it is five years old and further whatever rights or interests which may be created in the suit property will be subject to the outcome of the suit as contemplated under Section 52A of the Transfer of the Property Act.

5] In view thereof, writ petition stands disposed off.

6] The trial Court is directed to decide the suit as expeditiously as possible and preferably within a period of one year

from the date of this order. It is clarified that whatever observations are made by the Appellate Court about the genuineness of Will are of prima facie nature and those observations will not come in the way of trial Court while deciding the suit and the trial Court shall decide the suit on its own merits.

7] It is made clear that all the points and contentions raised by respective parties are expressly kept open.

[DR.SHALINI PHANSALKAR-JOSHI, J.]