

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 5915 OF 2017****Ramakant Wamanrao Bhokare & Anr.****..... Petitioners****VERSUS****Shrikant Wamanrao Bhokare & Ors.****..... Respondents**

Mr.Himanshu Kode for the Petitioners.

Ms.Pushpa K. Pasi, i/b. Mr.Pankaj Purway for the Respondent nos.1, 2 and 4.

Ms.Sonali Kunekar, i/b. Mr.Vikas Mahangare for the Respondent no.3.

CORAM : R.D. DHANUKA, J.**DATE : 17th SEPTEMBER, 2018****P.C.**

By this petition filed under Article 227 of the Constitution of India, the petitioners have impugned the order dated 5th January, 2017 passed by the Ad-hoc District Judge – 1, Pune dismissing the Misc.Civil Appeal No.252 of 2016 (Ex.22) filed by the petitioners (original defendant nos. 1 and 2).

2. The learned trial judge had allowed the application at Ex.5 filed by the original plaintiff restraining the petitioner herein from alienating the suit property till disposal of the suit and directing them not to demolish and reconstruct the suit property during the pendency of the suit.

3. The petitioners have propounded an alleged Will before the trial court which is allegedly registered according to the petitioners.

4. The learned District Judge has while dismissing the appeal filed by the petitioners has held that there is no requirement of the probate. The learned Ad-hoc District Judge has upheld the *prima facie* findings rendered by the learned trial judge and granted interim injunction in favour of the petitioners below Ex.5. In my view, even if the petitioners had relied upon an alleged Will, the petitioners were rightly prevented from alienating and creating third party rights in respect of the property which is subject matter of the suit and allegedly bequeathed in favour of the petitioners. I do not find any infirmity in the impugned order passed by the learned Ad-hoc District Judge – 1, Pune dated 5th January, 2017.

5. Writ petition is devoid of merit and is accordingly dismissed.

6. The suit is already at the evidence stage. Both the parties are directed to co-operate with each other and with the learned trial judge in disposing of the suit expeditiously. It is made clear that the observations made by the learned trial judge and by the appellate court are *prima facie*. The learned trial judge shall decide the suit without being influenced by the observations made by the learned trial judge as well as the appellate court.

[R.D. DHANUKA, J.]