

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

**APPEAL FROM ORDER (ST.) NO. 28631 OF 2018
WITH
CIVIL APPLICATION (ST.) NO. 28633 OF 2018
WITH
CIVIL APPLICATION (ST.) NO. 28634 OF 2018**

Bharat Tukaram Satav & Ors.	...	Applicants
V/s.		
The State of Maharashtra & Ors.	...	Respondents

- Mr.Y.B. Lengare a/w. Ms.Anita Gavkar for the Applicants.
- Mr.Sharad T. Bhosale for Respondent No.5.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 15th OCTOBER, 2018.

P.C. :

1] Heard learned counsel for the Appellant and learned counsel for the Respondent.

2] This Appeal is preferred against the order dated 06/11/2017 passed by the Adhoc District Judge-1, Barshi, thereby allowing the Application filed at Exhibit-18 in Regular Civil Appeal No. 82 of 2016.

3] The said Application was taken out by the Respondent herein under Order-39 Rule 1(A) of the Code of Civil Procedure for

temporary prohibitory injunction against the present Appellant. The Respondent herein is the Defendant No.5 in the trial Court. The trial Court has dismissed the suit filed by the present Appellant mainly on the count that the registered sale-deed was neither proved nor exhibited and it was the responsibility of the Appellant-Plaintiff to prove and get this registered sale-deed exhibited.

4] During the pendency of the suit, no such application for interim injunction was filed either by the Original Plaintiff or by Defendant No.5. In such situation, merely because the suit is dismissed, it was not proper on the part of the First Appellate Court to grant the relief of interim injunction, which is claimed by the original Defendant No.5. Hence, such Application without there being any finding of fact positively recorded that Defendant No.5 is in possession, cannot be granted.

5] Therefore, the Appeal is allowed. The impugned order passed by the First Appellate Court is set-aside. As a result, the Application filed at Exhibit-18 by the Respondent No.5 herein stands dismissed.

6] In view of disposal of the Appeal, nothing survives in the Civil Application(s), hence stand disposed of.