

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

APPEAL AGAINST ORDER NO.26/2017

Mrs. Nandabai Dilip Agrawal and others

..Vs..

Rajesh Banwarilal Agrawal and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Anand Deshpande, Advocate for the appellants.
Ms. Radha Singh, Advocate h/f Shri Amol Mardikar, Advocate for
respondent No.1.

CORAM : Z.A. HAQ, J.

DATE : 31.8.2018.

1. Heard Shri N.S. Deshpande, learned Advocate for the appellants and Ms. Radha Singh, Advocate h/f Shri Amol Mardikar, Advocate for the respondent No.1.
2. The respondent No.1 has filed civil suit praying for decree for declaration that the gift deed executed by the defendant No.1 in favour of defendant No.4 is illegal. The plaintiff has prayed for decree for possession and perpetual injunction restraining the defendants from creating any third party right in the civil suit.

In this civil suit, the plaintiff had filed an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure praying for temporary injunction which was dismissed by the trial Court by order dated 1st December, 2016. This order is challenged by the

plaintiff before District Court in Miscellaneous Civil Appeal No.1/2017. In this appeal, the plaintiff again filed an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure praying for temporary injunction. This application is allowed by the District Court by the impugned order. The District Court has restrained the defendants from alienating the suit property till disposal of the appeal pending before it.

3. This Court has not granted any interim order. The temporary injunction granted by the District Court is operating since 26th April, 2017.

4. As the appeal filed by the plaintiff under Order 43 Rule 1(r) of the Code of Civil Procedure is pending before District Court, in my view, it would not be appropriate to delve into the merits of the matter.

5. In the facts of the case, to sub-serve the ends of justice following order is passed:

(i) The appeal against order is **dismissed**.

(ii) The learned District Judge is directed to decide the appeal pending before him till 30th November, 2018.

(iii) In the circumstances, the parties to bear their own costs.

JUDGE