

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**943 FIRST APPEAL NO.1161 OF 2014
WITH
CIVIL APPLICATION NO. 5192 OF 2014
IN
FIRST APPEAL NO. 1161 OF 2014
WITH
CIVIL APPLICATION NO. 1764 OF 2015
IN
FIRST APPEAL NO.1161 OF 2014
WITH
CIVIL APPLICATION NO.14241 OF 2017
IN
FIRST APPEAL NO. 1161 OF 2014**

**DURRESHWAR BEGUM W/O MUBASHIR HUSSAIN AND OTHERS
VERSUS
ABDUL TAYYAB MULLAMUMTAZ HUSSAIN DIED L.RS. MURTUZA
HUSSAIN ABDUL TAYYAB AND OTHE**

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Advocate for Appellants : Mrs. A. N. Ansari
Advocate for Respondent No.2 : Mr. N. K. Kakade
Advocate for Respondent Nos. 1a and 3a (i) to (iii), 3b, 5 to 9 : Mr.
Subodh P. Shah
Advocate for Respondent No. 3-a (I) and 3b : Mr. Natu Sharad V. and
A. P. Bhandari
Advocate for Respondent No. 5 : Mr. Dixit Sushant V.

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**CORAM : T.V. NALAWADE &
SUNIL. K. KOTWAL, JJ.**

DATE : 06th March, 2019

PER COURT:

. After arguing the matter, the learned counsel for the

appellant on instructions submitted that the appellant wants to take decision in Special Civil Suit No.15/2018, presently pending in the court of Civil Judge, Senior Division, Aurangabad and for that the appellant wants to withdraw the present proceeding. She submitted that this Court had prevented the alienation of the property by passing an order on 20.02.2015 and that order is still in existence and only due to this order no move was made to obtain orders in aforesaid Special Civil Suit. She requests for continuation of this interim relief for some time to enable the appellant to apply in the Trial Court for getting similar relief.

2. In view of the nature of dispute and after hearing the learned counsels Mr. N. K. Kakade, Mr. S. P. Shah and Mr. S. V. Natu, this Court has formed opinion that the interim relief needs to be given but only in respect of the property mentioned in Suit No.631/2008 the decision which is challenged in the present matter. The learned counsel Mr. Bhandari submitted that as the appellant is not plaintiff in Special Civil Suit No.15/2018, the interim relief cannot be granted in favour of the appellant. This Submission is not acceptable as in a partition suit both plaintiff and defendant need to be treated as parties, claiming their respective shares and further even under Civil Procedure Code, relief of injunction, similar relief can be claimed even by the defendant. Learned counsel Mr. Dixit submitted that when the appeal

is being withdrawn, this Court cannot continue the interim relief. The learned counsel for the appellant submitted that due to death of defendant No. 2 she is withdrawing the appeal.

3. In view of all the aforesaid submissions and the nature of dispute, the Appeal is disposed of as withdrawn.

4. Civil Application is also disposed of.

5. The interim relief granted by this Court to continue only in respect of the property of Suit No.631/2008 for the period of one month only.

(SUNIL. K. KOTWAL, J.)

(T.V. NALAWADE, J.)