

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

WRIT PETITION NO. 5945 OF 2019

**KAMALNARAYAN JAGANATH JAISWAL
VERSUS
SUBHASH RAMGOPAL BHARUKA**

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Advocate for the Petitioner : Shri S. S. Jaiswal
Advocate for the Respondent - sole : Shri A. V. Patil – Inrale
h/f. Shri Vilas Patni

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 17th JUNE, 2019.

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PER COURT :

1. The petitioner is aggrieved by the judgment and order delivered by the Appellate Court dated 05/02/2019, by which, Misc. Civil Appeal No. 131/2018 filed by the defendant has been allowed. The order of the Trial Court dated 20/07/2018 below application Exhibit 5 granting injunction in RCS No.177/2015, has been quashed and set aside.

2. The learned Advocate for the petitioner has strenuously criticized the impugned order and has drawn my attention to the grounds formulated in the memo of the petition. He submits that Section 52 of the Transfer of Property Act would

prohibit any change in the nature of the suit property or creation of third party interest or encumbrances. He further submits that the Appellate Court had a limited jurisdiction and unless the order of the Trial Court was perverse or erroneous, there was no scope for the Appellate Court to cause any interference. Merely because a second view is possible, the Appellate Court could not have caused any interference in the impugned order.

3. The learned Advocate for the original defendant submits that he intends to construct a home on the suit property. He has not purchased it for business purposes. He does not mind if the suit is expedited.

4. Considering the above and upon going through the reasons assigned by the Appellate Court, this petition is disposed off with a direction to the Trial Court to decide RCS No.177/2015, as expeditiously as possible and preferably on or before 31/03/2020. It is made clear that the Trial Court would decide the suit on its own merits and would not be influenced by the observations made by the Appellate Court in the

impugned judgment, as they are restricted to the aspect of considering a prayer for temporary injunction.

(RAVINDRA V. GHUGE, J.)

shp/-