

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

WRIT PETITION NO.3311 OF 2018

**EKNATH RAMESHCHANDRA KHARADKAR AND ANOTHER
VERSUS
TARABAI MOHANRAO KHARADKAR THROUGH GPA V M
KHARADKAR**

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Advocate for the Petitioners : Shri A. N. Sabnis
Advocate for the Respondent -sole: Shri S. G. Thombre

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 21st JANUARY, 2019.

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PER COURT :

1. The petitioners are the original defendants, who are aggrieved by the judgment and order dated 16/12/2016 delivered by the Appellate Court, by which, temporary injunction has been granted in favour of the plaintiff to the extent of her possession over the first floor, staircase and the open space in the suit property. All the parties are enjoined from alienating the suit property or creating third party interest over the suit land.

2. The learned Advocate for the petitioners has strenuously criticized the impugned judgment. He submits that defendant

No.1 has purchased the suit property. The mutation entry stands in his name. There is no question of the plaintiff being in possession of any portion of the suit property. He has drawn my attention to the 8 (eight) grounds formulated in the memo of the petition and he has read out the entire judgment of the appellate court.

2. The learned Advocate for the plaintiff submits that she is a 73 years old widow. Defendant No.2 is the cousin brother of the deceased husband. He has created a sale-deed in favour of defendant No.2, who is his son-in-law. Both of them are trying to grab the property and oust a hapless widow from the premises. She is presently occupying the said premises whereas defendant No.2 resides at Buldhana.

3. I have considered the detailed judgment delivered by the Appellate Court. I find that the reasons assigned while delivering the judgment, are not such that there can be branded as being perverse. The apprehension of the defendants that the Trial Court would be influenced by the conclusions of the Appellate Court, can be put to rest by

observing that the Trial Court would decide the suit on its own merits. The injunction is operating against the defendants from 16/12/2016. Merely because a second view is possible, I do not find that the impugned judgment could be set aside.

4. It also cannot be lost sight of that the Appellate Court has concluded *prima-facie* that the 73 years old widow is presently occupying a portion of the suit property as described in the operative part of this order.

5. In view of the above, this petition is disposed off. The Trial Court shall endeavor to decide RCS No. 74/2012 as expeditiously as possible and in any case, on or before 31/01/2020. The litigating sides would extend their cooperation for such expeditious disposal of the suit.

(RAVINDRA V. GHUGE, J.)

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