

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

WRIT PETITION NO.11267 OF 2019

SHAIKH MOHSIN SHAIKH AHMED RAHIM AND ANOTHER
VERSUS
GAUSIYA BEGUM ABDUL RAUF DESHMUKH AND OTHERS

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Advocate for the Petitioners : Shri Salunke Mayur V.

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CORAM: RAVINDRA V. GHUGE, J.
DATE :- 13th September, 2019

Per Court:

1 The petitioners, original plaintiffs in Special Civil Suit No.120/2016, are aggrieved by the order of the Trial Court dated 11.11.2016 refusing temporary injunction while rejecting exhibit 5. They are also aggrieved by the judgment of the Appellate Court dated 21.02.2019 by which, Miscellaneous Civil Appeal No.94/2018 has been rejected.

2 The learned advocate for the petitioners has strenuously criticized the impugned order and has canvassed a host of reasons. He has also drawn my attention to the six grounds formulated in the memo of the petition.

3 I find from the record and the impugned orders that both the courts below have concluded that the petitioners/ plaintiffs have not succeeded in establishing exclusive ownership over the suit property. They had purchased the property through defendant no.1, who did not have

exclusive ownership over the entire property. The Appellate Court has also recorded that the plaintiffs could not make out the case to indicate that the whole property should be handed over to them and defendant no.1 should execute the sale deed in their favour to the extent of the entire property.

4 It is, however, observed by the Appellate Court that Section 52 of the Transfer of Property Act would take care of the interest of the plaintiffs if any third party rights are created during the pendency of the proceedings. In my view, if any such third party rights or encumbrances are created by any of the defendants, that would be within the domain of the Trial Court considering Section 52 of the Transfer of Property Act. The petitioners are without any injunctory orders ever since they have lodged their suit in 2016.

5 Considering the above, this writ petition need not be entertained and stands dismissed.

6 Needless to state, any third party rights or encumbrances created by any of the parties, would always be subject to the result of the suit in view of Section 52 of the Transfer of Property Act.

7 On the request of the petitioners, the Trial Court would endeavour to decide the suit expeditiously and preferably on or before 31.12.2020.